

PROCUREMENT GUIDE

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Utah Department of Transportation
Public Transit Team



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1. INTRODUCTION

Using this Manual

This document is intended to assist the Utah Department of Transportation (UDOT) and its subrecipients of Federal Transit Administration (FTA) grant funding with the federal procurement process. This document is not, however, intended to answer every question that may arise, nor will it address every procurement need. To ensure success and accuracy throughout the procurement process, it is suggested that one have a familiarity with the FTA guidance listed throughout the document.

Please note: All procurement documentation must be submitted to the UDOT Public Transit Team (PTT) for review and approval prior to the solicitation and awarding of a contract. Contract files must be properly maintained for auditing purposes.

Contents of this Manual

This procurement guide is divided into the following sections:

- 1. Introduction**

This section introduces this procurement guide and its uses.

- 2. Overview of Procurement**

This section introduces the reader to FTA and UDOT procurement guidelines, solicitation requirements, basic procurement language used throughout the document, and key elements of the procurement/solicitation process.

- 3. Procurement Fundamentals**

FTA requires that solicitation and the subsequent awarded contract must include a clear and accurate description of the recipient's technical requirements for the item(s) or services to be acquired in a manner that provides full and open competition. This section outlines these requirements.

- 4. Unauthorized vs. Authorized Entities**

To further clarify the procurement process and participants' roles, UDOT PTT has divided its clients/customers into two groups. This section describes the roles and responsibilities of these two groups, which are defined as follows:

- **Unauthorized Entities:** Typically non-governmental entities that have not been authorized by UDOT PTT to manage their procurement needs.
- **Authorized Entities:** Typically public agencies that manage their own procurement needs or have been authorized to do so.



5. Contract Management – From Solicitation to Closeout

The goal of this section is to introduce the reader to the basic steps of contract management from procurement to contract closeout. Adherence to and documentation of these steps will contribute to a successful contract as well as success with any UDOT or FTA audit.

6. Intergovernmental Procurement Agreements

Options are available for entities to work with like parties to combine needs and, therefore, reduce costs. Public organizations may also use interlocal agreements to take advantage of already agreed-upon rates. These options include piggybacking, joint procurements, and interlocal agreements. This section offers additional information on these strategies. UDOT PTT approval is required prior to entering into any contracts.

7. Intelligent Transportation Systems (ITS), Construction, and Bus Requirements

A number of federally required steps need to be followed to ensure that ITS, construction, and bus items are procured correctly and to federal standards. This section outlines those steps, and references additional checklists included in the appendices.



2. OVERVIEW OF PROCUREMENT

To simplify the FTA procurement process for UDOT and its subrecipients, this guide summarizes FTA procurement requirements and regulations. Federal grant recipients and subrecipients must comply with all applicable requirements under FTA program administration regulations, and therefore, should possess a sound understanding of the following:

- FTA Circular 4220.1F Third Party Contracting Guidance:
http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf
- FTA Best Practices Procurement Manual:
http://www.fta.dot.gov/documents/BPPM_fulltext.pdf
- FTA Construction Project Management Handbook:
http://www.fta.dot.gov/documents/Construct_Proj_Mangmnt_CD.pdf
- FTA ITS Architecture Policy Guidance:
http://ops.fhwa.dot.gov/its_arch_imp/policy_2.htm
- FTA Master Agreement:
<http://www.fta.dot.gov/documents/15-Master.pdf>
- USDOT Common Grant Rule, 49 CFR 18
http://www.access.gpo.gov/nara/cfr/waisidx_05/49cfr18_05.html
- UDOT Utah State Management Plan – Federal Transit Grant Programs:
<http://www.udot.utah.gov/main/uconowner.gf?n=10119514628386656>
- Utah Procurement Code (Utah Code Title 63G, Chapter 6):
<http://le.utah.gov/~code/TITLE63G/63G06.htm>

Recipient/Grantee vs. Subrecipient

In Utah, UDOT is the primary **recipient or grantee** of funds for transit projects and, in turn, disperses funds to its **subrecipients**—providing alternative transportation choices to elderly, persons with disabilities, and low-income individuals along with public transit in rural areas of the state. Key terms, such as recipient, and acronyms used throughout the document are defined in Appendix A.

Types of Procurement

The majority of FTA grants involves the procurement of goods and/or services, and must be conducted in full and open competition (where all qualified parties are eligible to compete). State procurement procedures apply when states are the recipients of FTA funding under the following grant programs codified in United States Code (USC): Section 5310 (Transportation for Elderly Persons and Persons with Disabilities), Section 5311 (Rural and Small Urban Areas), Section 5316 (Job Access and Reverse Commute (JARC)), and Section 5317 (New Freedom). A list of these UDOT-administered FTA programs can be found at www.udot.utah.gov/publictransit.



FTA disperses funds to grantees/subrecipients for the following five types of procurement:

- Professional Services/Architectural and Engineering (A&E) (third party consultants)
- Operations/Management
- Rolling Stock Purchase
- Construction
- Materials and Supplies

The above procurement types are also broken into three cost thresholds, each requiring specific steps and the use or inclusion of required federal clauses (see Appendix B for specific information about federal clauses and their pertinence to procurement types and thresholds). These three cost thresholds are classified as the following:

- Micro-Purchases
- Small Purchases
- Sealed Bids and Requests for Proposals

Solicitation

Solicitation is an important (and often required) part of the procurement process and must be considered early in the procurement process. Solicitations can range from two telephone calls to make a reasonable price determination (in the case of a micro-purchase), to a lengthy request for proposals (RFP) or request for qualifications (RFQ) (in the case of a competitive proposal). Because the contract will ultimately be based on the terms of the offers, selecting a method of procurement and the terms for the solicitation of offers is important and will have the most success if these methods are based on well-tested practices and documents.

As a starting point, a Public Solicitation Process Checklist is provided in Appendix C. (Simplified checklists, by authorized/unauthorized entity type and cost threshold, are included in Section 4 and Appendix D of this manual.) The subrecipient procurement checklist contains the steps of the procurement process. The items are grouped according to the following major categories:

- Pre-procurement Procurement Process
- Procurement Packet Preparation
- Finalize Bid/RFP/RFQ
- Conducting the Procurement
- UDOT Pre-award Review Process
- Post-award and Post-delivery Activities
- Contract Closeout



In addition, files must be maintained for all procurement actions. The subrecipient's procurement files need to be detailed enough to comply with either an FTA or UDOT audit. These files should contain a paper trail that clearly documents what goods or services were purchased and their associated costs. The files must also document compliance with FTA and UDOT requirements. FTA requires recipients and subrecipients to maintain procurement files and grant files for a period of no less than three years from the closing of the grant. This means that the subrecipient should maintain grant files for the life of the project or useful life of the capital items plus three years.

Awards to Responsible Contractors

All assisted contract awards will only be made to responsible contractors. UDOT expects prospective contractors to demonstrate that they qualify as responsible and that their proposed subcontractors also qualify as responsible. A responsible contractor is defined in FTA Circular 4220.1F as one who fulfills the following conditions:

- **Integrity and Ethics:** Has a satisfactory record of integrity and business ethics, in compliance with 49 USC 5325(j)(2)(A).
- **Debarment and Suspension:** Is neither debarred nor suspended from federal programs under the U.S. Department of Transportation's (USDOT) regulations, *Nonprocurement Suspension and Debarment*, codified at 2 Code of Federal Regulations (CFR) 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- **Affirmative Action and Disadvantaged Business Enterprise (DBE):** Is in compliance with the Common Grant Rule's affirmative action and DOT's DBE requirements (49 CFR 26).
- **Public Policy:** Is in compliance with the public policies of the federal government, as required by 49 USC 5325(j)(2)(B).
- **Administrative and Technical Capacity:** Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 USC 5325(j)(2)(D).
- **Licensing and Taxes:** Is in compliance with applicable licensing and tax laws and regulations.
- **Financial Resources:** Has or can obtain sufficient financial resources to perform the contract, as required by 49 USC 5325(j)(2)(D).
- **Production Capability:** Has or can obtain the necessary production, construction, and technical equipment and facilities.
- **Timeliness:** Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- **Performance Record:** Is able to provide a satisfactory current and past performance record.



Tips and Key Elements of the Solicitation Process

The following points should be considered during the solicitation process:

- Requesting or soliciting offers places the purchaser in the position of controlling the competitive procurement process.
- The purchaser, rather than the supplier, decides whether to accept or reject the offers.
- A solicitation does not bind the purchaser to goods or services requested.
- The act of merely soliciting offers is not a binding contract.
- The price quotations, bids, or proposals submitted by suppliers should be firm offers to the agency to supply the goods or services based on the specifications outlined in the request/solicitation.
- A thorough filing system should be created and maintained for all procurement documentation.



3. PROCUREMENT FUNDAMENTALS

Grant recipients must comply with the general procurement standards in FTA Circular 4220.1F. The circular applies to all FTA grantees and subrecipients that contract with outside sources under FTA assistance programs. The basic requirements are described below.

FTA Circular 4220.1F Requirements

Conformance with State and Local Law

Subrecipients should use their own procurement procedures that reflect applicable state and local laws and regulations, as long as the procurements conform to applicable federal law, including the requirements in Chapter 2, Section 4 of the FTA circular.

Contract Administration System

Subrecipients must maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Written Standards of Conduct

Subrecipients must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or board member of the grantee may participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, exists.

Ensuring Most Efficient and Economic Purchase

Subrecipient procedures must provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Sole-Source Awards

When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the subrecipient may make a sole-source award. The award must be justified based on the following criteria, even if the procurement is a contract modification, or in the event of a change order (see Circular 4220.1F, Chapter 6, Section 3.i (1)(b)):



- Unique capability or availability
 - Unique or innovative concept
 - Patents or restricted data rights
 - Substantial duplication costs
 - Unacceptable delay
- Single bid or proposal
- Unusual or compelling urgency
- Capital maintenance item exception
- Authorized by FTA

Intergovernmental Procurement Agreements

To foster greater economy and efficiency, subrecipients are encouraged to enter into state and local intergovernmental agreements for procurement or the use of common goods and services.

Use of Value Engineering in Construction Contracts

Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost (see 23 CFR 627.3).

Awards to Responsible Contractors

Subrecipients must make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See the discussion regarding contractor responsibility in Section 2 of this manual.

Written Record of Procurement History

Subrecipients must maintain records that detail the solicitation and procurement history. These records should include the following at a minimum:

- The rationale for the method of procurement
- Selection of contract type
- Reasons for contractor selection or rejection
- The basis for the contract price



Responsibility for Settlement of Contract Issues or Disputes

Subrecipients will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising from procurements.

Written Protest Procedures

Subrecipients must maintain written protest procedures to handle and resolve disputes relating to their procurements and must, in all instances, disclose information regarding the protest to FTA. All protest decisions must be in writing. A protestor must exhaust all administrative remedies with the subrecipient before pursuing a protest with UDOT or FTA.

Contract Period of Performance Limitation

Contracts are typically limited to five years. Contracts extending beyond five years must be justified and approved by UDOT PTT.

Full and Open Competition

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- Unreasonable requirements placed on firms for them to qualify to do business
- Unnecessary experience and excessive bonding requirements
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive awards to any person or firm on retainer contracts
- An organizational conflict of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered
- Any arbitrary action in the procurement process

Prohibition against Geographic Preferences

Subrecipients must conduct procurements in a manner that prohibits geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws. However, geographic location may be a selection criterion in procurements for A&E services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.



Written Procurement Selection Procedures

Subrecipients must maintain written selection procedures for procurement transactions. All solicitations should fulfill the following criteria:

- Solicitations should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions should not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.
- A subrecipient should use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed technical description. Further, a subrecipient wishing to use "brand name or equal" must carefully identify its minimum needs and clearly include those key physical and functional characteristics of the brand name product in the solicitation.
- A subrecipient should identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Pre-Qualification Criteria

Subrecipients must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum, full, and open competition. Also, subrecipients must not preclude potential bidders/proposers from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

Options

Subrecipients may include options in contracts. An option is a subrecipient's right to purchase additional equipment, supplies, or services called for by the contract, or the subrecipient's right to elect to extend the term of the contract. If a subrecipient chooses to use options, the following requirements apply:

- **Evaluation of Options:** When options have not been evaluated as part of the award, the exercise of such options will be considered a sole-source procurement. A sole-source justification is required for any acquisition that does not qualify as competitive. A non-governmental recipient need only provide a justification for lack of competition when it does not obtain competitive bids or proposals for contracts exceeding the simplified acquisition threshold.



- **Exercise of Options:**

- A subrecipient must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
- An option may not be exercised unless the subrecipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

Inclusion of Required FTA Clauses

In addition to ensuring that the appropriate steps are taken to adhere to the above requirements, UDOT federal grant subrecipients, contractors, and subcontractors must ensure compliance with applicable federal regulations for all contracts, subcontracts, RFPs/RFQs, and bids. Appendix B includes specific information about required FTA clauses, including the applicability of specific regulations and clauses for each type of procurement, clause summaries, and suggested contract language. Appendix E includes corresponding certifications.

Disadvantaged Business Enterprise (DBE)

USDOT's Disadvantaged Business Enterprise (DBE) program is intended to ensure nondiscrimination in the award and administration of DOT assisted contracts including transit programs. The goals of the program are to remedy past and current discrimination against DBEs, ensure a "level playing field" in which DBEs can compete fairly for DOT assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

If a DBE goal has been identified, subrecipients are required to allow DBEs the opportunity to bid, and to keep a record of all DBEs contacted or solicited. All contractors bidding on a specific project are required to submit a list of all companies providing a quote. All DBEs must be certified in the Utah Unified Certification Program (UUCP). Multiple DBE documents are required to be submitted with the public solicitation response (e.g., a bidders list, comparison report, and contact information report). Consult your project manager for specific DBE requirements.

If there is a DBE goal (e.g., race conscious) to be met, the bidder must meet the goal at the time of bid by supplying the name, address, and phone number of the DBE, along with the DBE's description of work and price. If the subrecipient does not meet the DBE goal at the time of bid, they must perform a Good Faith Effort, which will be evaluated at bid time.



Good Faith Effort

When subrecipients establish a DBE contract goal, they must award the contract only to a bidder/offeror that makes good faith efforts to meet it. Subrecipients must determine that a bidder/offeror has made good faith efforts, which is accomplished if the bidder/offeror does either of the following:

- Documents that it has obtained enough DBE participation to meet the goal; or
- Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the bidder/offeror does document adequate good faith efforts, subrecipients must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. Consult your project manager for details regarding good faith effort documentation.

If a DBE is a successful low bidder, the subrecipient must have the DBE firm sign a DBE Confirmation form (in which the DBE confirms that they will perform the stated work) and submit it to UDOT PTT within three days of awarding of the contract. If there is no DBE goal (e.g., race neutral) and a DBE is awarded a contract, the subrecipient must report DBE participation to UDOT PTT.



4. UNAUTHORIZED VS. AUTHORIZED ENTITIES

Because Utah procurement requirements are more restrictive than FTA's, the Federal Common Grant Rule allows UDOT to administer grants based on its own specifications. To further clarify the procurement process and participants' roles, UDOT PTT has divided its subrecipients/customers into two groups. This section describes the roles and responsibilities of these two groups, which are defined as follows:

- **Unauthorized Entities:** Typically non-governmental entities that have not been approved by UDOT PTT to manage their procurement needs.
- **Authorized Entities:** Typically public agencies that manage their own procurement needs or have been approved to do so.

Unauthorized Procurement Guidance

Subrecipients who are not procurement specialists and have not been authorized by UDOT must adhere to the guidelines described below.

Unauthorized Micro-Purchase: Up to \$2,999

- A micro-purchase is the acquisition or purchase of services, supplies, or other property that amount to less than \$3,000. Micro-purchases may be made without obtaining competitive quotations if the subrecipient determines that the price to be paid is **fair and reasonable**. A fair and reasonable price determination should be included in the documentation of micro-purchases.
- Micro-purchases are **exempt from the Buy America requirements** (as discussed in Appendix B and Appendix E of this document).
- Micro-purchases should be **equitably distributed** among qualified suppliers in the local area. Rotating through a list of suppliers is one method to equitably distribute the micro-purchases among qualified suppliers. Purchases should not be split to avoid the requirements for competition above the \$3,000 micro-purchase threshold.
- Subrecipients are encouraged to utilize the Utah DBE directory as a resource for procurement needs. (The Utah DBE directory and additional DBE information can be found on the UDOT DBE Web page: <http://www.udot.utah.gov/go/dbe>.)

Unauthorized Procurement Micro-Purchase Checklist

\$0 – \$2,999

- ☐ Identify item specifications/needs
- ☐ Obtain 2 telephone/e-mail bids, or Sole-source justification
- ☐ Utilize the Utah DBE directory (if applicable)
- ☐ Maintain purchase history file



Unauthorized Small Purchase: \$3,000 to \$4,999

- A small purchase is the acquisition or purchase of services, supplies, or other property that costs between \$3,000 and \$4,999.
- This procedure requires obtaining quotations from at least two qualified sources. Quotations for small purchases may be either oral or written.
- Subrecipients are encouraged include the Utah DBE directory as a resource for procurement needs. (The Utah DBE directory and additional DBE information can be found on the UDOT DBE Web page: <http://www.udot.utah.gov/go/dbe>.)

\$5,000 or More

UDOT PTT is required to handle all purchases over \$5,000.

- Subrecipients need to provide the UDOT program manager with all of the relevant item(s) specifications or details of the desired product or need.

Unauthorized Procurement Small Purchase Checklist

\$3,000 – \$4,999

- ☐ Identify item specifications/needs
 - ☐ Obtain 2 telephone/e-mail bids, or Sole-source justification
 - ☐ Utilize the Utah DBE directory (if applicable)
 - ☐ Maintain detailed purchase history file
- Or
- ☐ Choose public solicitation type (bid or RFP/RFQ)
 - ☐ Develop decision criteria; include with bid
 - ☐ Obtain UDOT approval of the document prior to public release
 - ☐ Obtain UDOT approval of award prior to contractor notification

Authorized Procurement Guidance

When a subrecipient has procurement authority, it is the subrecipient's responsibility to manage the entire contract (from solicitation to closeout) and ensure that it complies with all FTA requirements. Again, **it is important to note that when an entity's procurement regulations are more restrictive than UDOT's regulations, or if the regulations differ, the entity must follow the regulations that are most restrictive.** UDOT procurement thresholds are discussed below.

Authorized Micro-Purchase: Up to \$2,999

- A micro-purchase is the acquisition or purchase of services, supplies, or other property that amount to less than \$3,000. Micro-purchases may be made without obtaining competitive quotations if the subrecipient determines that the price to be paid is **fair and reasonable**. A fair and reasonable price determination should be included in documentation of micro-purchases.
- Micro-purchases are **exempt from the Buy America requirements** (as discussed in Appendix B and Appendix E of this document).

Authorized Procurement Micro-Purchase Checklist

\$0 – \$2,999

- ☐ Identify item specifications/needs
- ☐ Obtain 2 telephone/e-mail bids, or Sole-source justification
- ☐ Utilize the Utah DBE directory (if applicable)
- ☐ Maintain purchase history file



- Micro-purchases should be **equitably distributed** among qualified suppliers in the local area. Rotating through a list of suppliers is one method to equitably distribute the micro-purchases among qualified suppliers. Purchases should not be split to avoid the requirements for competition above the \$3,000 micro-purchase threshold.
- Subrecipients are encouraged to utilize the Utah DBE directory as a resource for procurement needs. (The Utah DBE directory and additional DBE information can be found on the UDOT DBE Web page: <http://www.udot.utah.gov/go/dbe>.)

Authorized Small Purchase: \$3,000 to \$49,999

- A small purchase is the acquisition or purchase of services, supplies, or other property that cost between \$3,000 and \$49,999.
- This procedure requires obtaining quotations from at least two qualified sources. Quotations for small purchases may be either oral or written.
- Subrecipients are encouraged to utilize the Utah DBE directory as a resource for procurement needs. (The Utah DBE directory and additional DBE information can be found on the UDOT DBE Web page: <http://www.udot.utah.gov/go/dbe>.)

Authorized Public Solicitation: \$50,000 or More

There is no federal requirement for the use of a sealed bid or competitive proposal. However, sealed bids and competitive proposals are most often used. For further assistance, refer to the Public Solicitation Process Checklist in Appendix C.

- Subrecipients are encouraged to utilize the Utah DBE directory as a resource for procurement needs. (The Utah DBE directory and additional DBE information can be found on the UDOT DBE Web page: <http://www.udot.utah.gov/go/dbe>.)

Authorized Procurement Small Purchase Checklist

\$3,000 – \$49,999

- ☐ Identify item specifications/needs
- ☐ Obtain 2 telephone/e-mail bids, or
Sole-source justification
- ☐ Utilize the Utah DBE directory
(if applicable)
- ☐ Maintain detailed purchase history file

Or

- ☐ Choose public solicitation type (bid or RFP/RFQ)
- ☐ Develop decision criteria;
include with bid
- ☐ Obtain UDOT approval of the
document prior to public release
- ☐ Obtain UDOT approval of award prior
to contractor notification
- ☐ Maintain adequate files for auditing
purposes

Authorized Procurement Public Solicitation Checklist

\$50,000 or More

- ☐ Identify item specifications/needs
- ☐ Utilize DBE directory (if applicable)
- ☐ Choose public solicitation type
(bid or RFP/RFQ)
- ☐ Develop decision criteria;
include with bid
- ☐ Obtain UDOT approval of the
document prior to public release
- ☐ Obtain UDOT approval of award prior
to contractor notification
- ☐ Maintain adequate files for auditing
purposes



Sealed Bids (Formal Advertising)

Sealed bidding is a generally accepted procurement method in which there is a public invitation or advertisement for bids, and a firm, fixed-price contract (lump sum or unit price) is awarded to the bidder whose bid, conforming to all the material terms and conditions of the invitation for bids (IFB), is lowest in price.

Appropriate Use of Sealed Bids: UDOT encourages the use of sealed bids for acquiring property, construction, and other services if any of the following circumstances are present:

- **Precise Specifications:** A complete, adequate, precise, and realistic specification or purchase description is available.
- **Adequate Sources:** Two or more responsible bidders are willing and able to compete effectively for the business.
- **Fixed-Price Contract:** The procurement generally lends itself to a firm, fixed-price contract.
- **Price Determinative:** The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation, including but not limited to transportation costs, life cycle costs, and discounts expected to be taken.
- **Discussion Unnecessary:** Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. This contrasts with competitive proposal procedures wherein discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.

Procurement Procedures: The following procedures apply to sealed bid procurements:

- **Publicity:** The IFB is publicly advertised.
- **Adequate Sources:** Bids are solicited from an adequate number of known suppliers.
- **Adequate Specifications:** The IFB, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- **Sufficient Time:** Bidders are allowed sufficient time to prepare bids before the bid opening.
- **Public Opening:** All bids are publicly opened at the time and place prescribed in the IFB.
- **Required at Bid Opening:** UDOT Civil Rights, Project Manager, Agency Procurement Specialist,
- **Fixed-Price Contract:** A firm, fixed-price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed-price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid. Payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
- **Rejection of Bids:** Any or all bids may be rejected if there is a sound, documented business reason.



Competitive Proposals (RFPs)

Competitive proposals are a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal.

Appropriate Use of Competitive Proposals: Competitive proposals should be used when any of the following circumstances are present:

- **Type of Specifications:** The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- **Uncertain Number of Sources:** The recipient is uncertain as to whether more than one bid will be submitted in response to an IFB, and the recipient lacks the authority or flexibility under state or local law to negotiate the contract price if it receives only a single bid.
- **Price Alone Not Determinative:** Due to the nature of the procurement, contract award need not be based exclusively on price. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
- **Discussions Expected:** Separate discussion with individual offerors is expected to be necessary after they have submitted their proposals. This contrasts with formal advertising procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

Procurement Procedures: The following procedures apply to procurements by competitive proposals:

- **Publicity:** The RFP is publicly advertised (through bidsync, website, newspaper, etc.).
- **Evaluation Factors:** All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
- **Adequate Sources:** Proposals are solicited from an adequate number of qualified sources, including DBEs.
- **Evaluation Method:** A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- **Price and Other Factors:** An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.
- **Best Value:** If permitted under its state or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient (see FTA Circular 4220.1F Chapter I.5.b). To do so, the recipient's solicitation must inform potential offerors



that the award will be made on a “best value” basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, management plan, and if applicable, DBE goals.

- **DBE Involvement:** UDOT Civil Rights is required to be involved throughout the procurement if a DBE goal has been identified.



5. CONTRACT MANAGEMENT – FROM SOLICITATION TO CLOSEOUT

Bid Procurements

FTA and UDOT require subrecipients to maintain a written record of the bid award decision. Documentation of the award decision should include the following information:

- A tabulation and evaluation of bids including the following:
 - A determination that the low bid is fully responsive to the invitation for bids (IFB). When there are lower bids than the bid being accepted for award, the award decision document must give the reasons for rejecting the lower bids. When there are equal bids, the documentation must describe how the tie was broken.
- A determination that the low bidder is responsible, which shows that the bidder possesses the following:
 - Financial resources adequate to perform the contract or the ability to obtain them
 - The ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments
 - A satisfactory performance record
 - A satisfactory record of integrity and business ethics
 - The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them
 - Compliance with applicable licensing and tax laws and regulations
 - The necessary production, construction, and technical equipment and facilities, or the ability to obtain them
 - Compliance with affirmative action and DBE requirements
- A determination of the reasonableness of the price
 - Every procurement action must include a cost or price analysis to determine the reasonableness of the proposed contract price. The starting point for this cost or price analysis should be the independent cost estimate. Significant differences between the independent cost estimate and the low bid need to be discussed.

Negotiated Procurements (RFPs and RFQs)

Having considered all of the submitted proposals, FTA and UDOT require that subrecipients maintain documentation of the basis of the contractor decision. The contract file documentation should include the following:

- **Determination of Competitive Range:** This documentation should identify those proposals that had a reasonable chance of being selected for award, given their relative technical strengths and weaknesses and their relative prices.



- **Technical Evaluation:** This evaluation should indicate the relative strengths and weaknesses of the proposals, together with the technical risks (if any) of the various approaches.
- **Cost/Price Analysis:** In all instances, the contract file must reflect evidence of a cost/price analysis. A separate cost/price analysis memorandum could be prepared that analyzes the costs or prices proposed against: (a) the independent cost estimate prepared prior to solicitation, (b) specific company information in the proposals, such as the particular technical approach being offered, and (c) any other pertinent information such as a technical evaluation of the cost proposal, an advisory audit of the offeror's cost proposal, or a comparison of prices offered with prior procurements.
- **Determination of Selected Contractor's Responsibility (Scope):** The contract file should include documentation regarding the selected contractor's responsibility (scope).

Contract Administration

FTA has established the following two standards that address contract administration documentation as opposed to procurement documentation:

1. **Contract Administration System:** Subrecipients must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Responsibility for Settlement of Contract Issues or Disputes:** Subrecipients will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

FTA and UDOT, at any point, may perform a review or audit to ensure that federal funds were appropriated according to federal requirements. To ensure a positive review, a stand-alone file for each contract must be maintained to demonstrate that the subrecipient and the contractor have complied with the terms of the contract (e.g., bonds have been submitted, contractual issues requiring the approval of the contracting officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.).

File Contents

For sealed bid procurements and competitive negotiations, consider including the following as documentation of the contract and notice of award:

- Performance and payment bonds, bond-related documentation, and correspondence with any sureties
- Contract-required insurance documentation
- Post-award (pre-performance) correspondence from or to the contractor or other governmental agencies



- Notice to proceed
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements
- Modifications or changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and/or increases to or decreases from the contract price as a result of those modifications
- Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval of the settlement amount by the proper authority (e.g., city council, board of directors, executive director)
- Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default)
- Documentation relating to contract closeout (see closeout discussion below)
- For small purchases and micro-purchases it may be helpful to automate the documentation or keep some of the above elements on a standard record

Closeout

To comply with closeout requirements, subrecipients will have to obtain the required information, reports, final invoices, and other documentation as appropriate from their contractors as part of the contract closeout process. The closeout information required by FTA from subrecipients pertains to the following:

- Final performance or progress report
- Financial status report
- Final request for payment
- Invention disclosure (if applicable)
- Federally owned property report (does not include property obtained with grant funds)

A completed contract is one that is both physically and administratively complete. A contract is physically complete only after all deliverable items and services called for under the contract have been delivered and accepted. These deliverable items might include reports, spare parts, warranty documents, and proof of insurance (where required by contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are complete.

A contract is administratively complete when all payments have been made and all administrative actions have been accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

The project manager or contract administrator should have a contract closeout checklist, listing all the administrative steps required to close out a contract.



6. INTERGOVERNMENTAL PROCUREMENT AGREEMENTS

Piggybacking and Joint Procurements

Subrecipients may utilize available and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, subrecipients must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the subrecipient's purchase document.

Subrecipients can also jointly procure goods and services with other recipients. When obtaining goods or services in this manner, subrecipients must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

FTA suggests that subrecipients consider combining efforts in their procurements to obtain better pricing through larger purchases. Joint procurements offer the additional advantage of obtaining goods and services that exactly match each cooperating subrecipient's requirements. Piggybacking does not combine buying power at the pricing stage and may limit subrecipients' choices to those products that exceed another subrecipient's needs.

Prior to entering into an agreement, UDOT PTT requires an electronic copy of all documents associated with the bid process including the in-place vendor contract. Pre-approval for piggybacking and joint procurements must be obtained from a UDOT PTT project manager.

Piggybacking

If it appears that there may be an existing governmental contract that may be used for a specific need, subrecipients should first obtain a copy of the entire contract and review it carefully to determine if it contains the provisions required by FTA Circular 4220.1F. UDOT PTT also requires that an electronic version of the contract be sent to the appropriate program manager. This is an important first step because the requirements of the circular apply to procurements made through intergovernmental contracts and assignments. If the contract lacks required provisions, the awarding agency may modify it to include the necessary federal clauses. The following is a list of suggested steps to complete:

- Determine that the contract is still in effect or can be modified by the awarding agency to permit sufficient lead time to make the required deliveries to the agency.
- Determine that the specifications in the existing contract will meet subrecipients' needs.
- Review the terms and conditions carefully to determine that they are acceptable (e.g., warranty provisions, insurance requirements, etc.).



- Determine that the necessary requirements will not be beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract, which will have to be justified in accordance with FTA Circular 4220.1F Paragraph 9.h. Generally, with an indefinite quantity contract one should have the needed flexibility to order additional quantities without having a "new procurement" action requiring a sole-source justification.
- Piggybacking is permissible when the solicitation document and resultant contract contain an "assignability clause" that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. This means that the rights conveyed by the contract may be transferred to another party by assignment, unless an express restriction on assignment exists within the contract, or unless an assignment would violate public policy. See the following example clause:

Neither party shall assign or otherwise transfer any of its rights, interests, or obligations under this Agreement (Contract) to a third party without the prior written consent of the other party which shall not be unreasonably withheld.

- Determine that the contract was awarded competitively, either through sealed bids or competitive proposals. If the contract was a sole-source award, justify a sole-source award in accordance with FTA Circular 4220.1F Paragraph 9.h and the agency's procurement procedures.
- A second price analysis is not required if one was originally performed. However, one must determine that the contract prices originally established are still fair and reasonable.
- Determine that the contractor has submitted all federally required certifications to the awarding agency (e.g., Buy America, debarment, restrictions on lobbying, etc.).
- Work through the items in the Piggybacking Worksheet in Appendix F.
- A Memorandum for the Record should be prepared documenting the analysis of the various items mentioned above.

Joint Procurements

When it appears that an agency has a procurement need in common with another governmental agency, and that a joint procurement is feasible, the agency should consider whether a joint procurement will result in the best price for all of the parties to the procurement. It is possible that differences in the requirements (such as delivery schedule, quantities, or location) of one party to the joint procurement will result in increased costs to the other parties and thereby negate other benefits of a joint procurement such as lower solicitation costs. The agency must also determine whether the different funding sources have different procurement regulations, especially where there are federal and non-federal requirements.



State Contract Utilization

The State of Utah has great leverage in terms of purchasing power, and has created a number of cooperative contracts. In addition, the State of Utah has many Western States Contracting Alliance (WSCA) contracts. This brings to the state even more contracting muscle as WSCA is a cooperative purchasing group made up of 15 western states. Local governmental agencies are welcomed and encouraged to use state contracts to take advantage of state discounted procurement rates.

Please see the Utah Division of Purchasing at <http://www.purchasing.utah.gov/> or call for further information (801.538.3148).



7. INTELLIGENT TRANSPORTATION SYSTEMS (ITS), CONSTRUCTION, AND BUS REQUIREMENTS

ITS Requirement

The term **intelligent transportation systems** (ITS) encompasses a broad range of wireless and wire line communications-based information and electronics technologies (such as surveillance, mobilization, and dynamic message signs). In this manual, ITS refers to the addition of this technology to transit infrastructure and vehicles to manage factors that typically are at odds with each other, such as vehicles, loads, and routes. Managing these factors will improve safety and reduce vehicle wear, transportation times, and fuel consumption.

If a project includes ITS components that implement any of the “user services” as defined in the ITS Architecture Policy Guidance (www.ops.fhwa.dot.gov/its_arch_imp/guidance.htm), it is considered an ITS project. The following services are most likely implemented:

- Travel and traffic management
 - Pre-trip travel information
 - Route guidance
 - Ride matching and reservation
 - Traffic control
- Public transportation management
 - Public transportation management
 - En-route transit information
 - Public travel security
- Electronic payment
 - Electronic payment services
- Emergency management
 - Emergency notification and personal security
- Information management
 - Archived data user services

The recipient needs to be a part of the regional ITS architecture, and the ITS projects must be included in the locally approved ITS architecture. In Utah, there are the following three ITS regions:

- Dixie – Washington County
- Wasatch Front – Provo, Orem, Salt Lake City, Ogden
- Cache Valley – Logan



The state works with the counties and communities outside of the MPO boundaries to ensure their participation. The recipient/grantee or subrecipient must contact the regional administrator to ensure that their project is recognized in the local architecture. Documentation of communication or any forms completed must be kept for auditing purposes.

ITS Contacts

- Utah Department of Transportation, 801.887.3723
- Dixie Metropolitan Planning Organization, 435.637.3548
- Wasatch Front Regional Council, 801.363.4250
- Cache Metropolitan Planning Organization, 435.455.1634

Construction

Subrecipients using federal funds for construction projects are responsible for understanding all phases of project management and the federal requirements therein. The link to the handbook below provides a comprehensive introduction to construction project management, including the applicability of the principles of project management and of all phases of project development—from project initiation through planning, environmental clearance, real estate acquisition, design, construction, commissioning, and closeout.

FTA construction handbook: http://www.fta.dot.gov/documents/Construct_Proj_Mangmnt_CD.pdf

Vehicle Procurement

This section is designed to assist in describing vehicle procurement needs, but ongoing communication with UDOT PTT program managers is critical to success as well.

The remaining text in this section is quoted directly from the Rural Transit Assistance Program's (RTAP) Vehicle Procurement Guide. The guide is found at <http://portal.nationalrtap.org/iframe/-resourcedetail.aspx?id=12> . (The original technical brief was written by Connie Garber and Joe Seitz, and has been edited and reissued by RTAP.)

Effective vehicle procurement follows the following **five basic steps**:

1. Define the kind of vehicle your system needs.
2. Learn what is available on the market.
3. Write specifications that accurately describe your requirements.
4. Announce your invitation of bids.
5. Develop quality assurance checklist.



1. Defining the Vehicle You Need

Do your research. Analyze your system's ridership, routes, and budget to define the kind and quantity of vehicles that best suit your needs. Create a comment file to record input from riders, operators, mechanics, and others about your current vehicles. This information will provide a valuable "snapshot" of your system, showing areas requiring attention. Consider what your system's needs will be over the life span of the new vehicle(s). You will want to acquire vehicles that can satisfy your anticipated needs for the foreseeable future.

What size vehicle do your riders need?

How much seating capacity is required? One quick and simple way to estimate the capacity you need is by determining the lowest and highest number of riders your vehicles carry and selecting the mid-point or median. You can always operate a bus that is half full, but it is more cost effective to fill the seats a majority of the time with minimal seat vacancies. If you are buying vehicles to expand services rather than to replace vehicles, questions of appropriate size will require more time to answer. You will need to consider potential rather than actual use. Wheelchair placements require special attention. Lifts and placements must be installed first and will affect overall capacity. How many wheelchair placements are necessary? Where should the placements be in the vehicle? You will need to consider the following:

- Do you want the lift in the front or the rear of the vehicle? A front lift allows the driver to use the rear view mirror to easily monitor any special needs of wheelchair users and makes for a smoother ride for the passenger. However, a front lift may limit the aisle space for ambulatory people walking from the entry door to seats in the rear. A front lift also raises the issue of emergency exit from the vehicle. A rear emergency door could be accessible if the wheelchair could reach it, but this would affect the number and placement of other seats and the aisle width. It would also present challenging evacuation procedures for wheelchair users. Be sure to check with FTA and your state regulations on proper lift placement.
- The Americans with Disabilities Act requires forward-facing or rear-facing wheelchair placements. The majority of literature, crash tests, and accident investigations show forward-facing placements to be significantly safer for wheelchair users. If you are considering installing rear-facing wheelchair placements, be sure to consult USDOT's guidance in 49 CFR 38. Side-facing wheelchair placements are prohibited.

What size vehicle is most effective for the system's routes?

Will the vehicle be used for short local trips, making frequent stops? Is it needed for long high-demand routes? What are your drivers' capabilities and limitations? Take a look at the planned use for the vehicle, especially the duration and demand of its expected routes. A smaller vehicle may make more sense if it is being used on trips with low demand, while a larger vehicle may be more practical for high-demand routes. Keep in mind that size will determine whether or not your drivers will need a CDL in order to operate the new vehicle. If a CDL is required, you need to determine how many of your drivers



have a CDL or have the ability to obtain one. If the selected vehicle requires a CDL and only some of your drivers have one, you will have to arrange your drivers' schedules accordingly. This should be taken into consideration before the purchase decision is made.

Try to arrange for field-testing of the prospective vehicles by your drivers and mechanics, and include your clients if at all possible. Once a vehicle has been chosen, arrange for a prototype to be examined by your drivers, mechanics and clients.

Are there specific service area characteristics that impact operations?

Will the vehicle be used on narrow streets, winding roads, cul-de-sacs or unpaved roads? Is the terrain difficult? Is the climate extremely cold, hot, or otherwise harsh? If your system has operated vehicles for any period of time, you hear from the drivers and mechanics what problems exist. Are the vehicles too long to turn around on the streets they travel? Do they lack sufficient engine horsepower to get up hills when fully loaded with passengers? Is the engine consistently struggling when the air conditioning is on? Do they sustain numerous dents that you can't afford to repair? Are certain features maintenance headaches? Can your current maintenance operation (mechanics and equipment) service the proposed new vehicle(s)? Would diesel vehicles require a place to be plugged in during cold weather? Will you be able to obtain needed repairs and parts replacement for specialized vehicles without unacceptable down time?

Some of these issues, such as requiring the name(s) of local repair/parts companies, can be dealt with in the bid specifications, but if a crucial element (such as a diesel mechanic) is not readily available you may want to consider this in your choice of vehicles.

What is your budget?

While your system's capacity is largely defined by your vehicle inventory, building that inventory is dictated by your budget. Do you have access to federal funds? If so, how will you meet non-federal match requirements? What funds do you have for operations or maintenance over the life of the vehicle? How many drivers will you need (for example, two drivers for two small vehicles or one driver for a larger vehicle)?

Vehicles are expensive to buy, and if you have limited local match money, the types of vehicles available within your budget may be limited. Make some phone calls to local distributors to get an idea of a base price, or contact [UDOT] for recent bid prices on other vehicles purchased.

The vehicle's purchase price alone is not your only budget consideration. Other priorities, such as safety, maintenance, comfort, and delivery time must be considered. Operating and maintenance costs will vary greatly. The "affordable" vehicle that comes in as the low bid may be very expensive to maintain, and your operating assistance may not always be sufficient to repair or replace damaged or worn-out parts. If a quoted price for a vehicle seems low, find out what shortcuts may have been taken to achieve



that figure (such as no roll-over cage in the driver's area, wheel wells made of plywood, multiple electrical systems on one fuse, etc.).

2. What's On the Market

After you have determined the best vehicle for your operation, take a look at what's available. Over the last several years, a number of new vehicle types have entered the public transportation market:

- Purpose-built (special) – Any custom vehicle built for special use, including small three-to-five passenger vehicles.
- Purpose-built (conventional) – Small transit-style buses specifically designed and built as buses.
- Vans – Any standard (generally seven- to 15-passenger) vehicle available from one of the automobile manufacturers.
- Modified van – A standard van that has been altered by an aftermarket manufacturer to include a raised roof, lowered floor, or other major modifications.
- Body-on-chassis – Any bus body mounted on standard van or truck chassis (body and chassis are usually manufactured by two different companies).
- School bus type – Often body-on-chassis, designed to transport school children. These vehicles are often used in community transportation operations to increase capacity without incurring the cost for a transit-style vehicle.
 - A list of vehicle models and manufacturers is provided in the annually published *Community Transportation Buyer's Guide*.
 - Copies are available through the National Transit Resource Center at 800.527.8279.

3. Writing Specifications

After you have determined the type of vehicle you need and what's available on the market, you are ready to put pen to paper and list the requirements for a vehicle. If you instead use [UDOT] provided specifications, review to ensure that they meet your operating needs. Begin the technical specifications with a statement on how the vehicle will be used, such as, "The vehicle(s) described in these specifications will be used to transport elderly, disabled, and general public passengers for local work, medical and shopping trips." This tells potential bidders the type of use—in this case, stop-and-go in-town service—so they can match an appropriate vehicle to your needs.

Requirements and Compliance

Know what is required by state and federal law and review all specifications—with your own requirements and questions in mind—before you begin the bid process. Is there a state purchasing office? Are there state and federal Americans with Disabilities Act (ADA) requirements? Have you addressed DBE requirements? Thorough specifications will reduce the risk of receiving a multi-thousand dollar piece of equipment that is inappropriate or problematic. If any federal funding will be used in your purchase, you will have to comply with federal guidelines for receiving assistance, including the following:



- **Pre-Award/Post-Delivery Audits**

The FTA requires all recipients of federal funding to perform pre-award and post-delivery audits to ensure compliance with all pertinent federal regulations. The pre-award audit is performed once the low bidder has been identified and before any contract is awarded. The post-delivery audit occurs after the vehicle has been delivered and verifies that the contractor met all the necessary requirements. Do not pay 100 percent of the vehicle purchase price until you are certain the vehicle meets your specified requirements.

- **Americans with Disabilities Act (ADA)**

A central provision of this act requires that anytime federal money is involved in a project (such as procuring a vehicle) there must be full accessibility for disabled individuals. Vehicles purchased with federal assistance MUST be in compliance with the ADA requirements for accessibility by disabled passengers or FTA will withdraw federal funding. Include the ADA-compliance requirement in your specifications, along with a disclaimer that any additions, deletions, omissions, or interpretations of ADA relating to the vehicle(s) in question are the responsibility of the contractor.

- **Buy American Audit**

As part of the pre-award audit you must be sure that the contractor is in compliance with the Buy American Audit. Prior to signing a contract, request a certificate stating that 60 percent of the parts supplied in the vehicle are made in America and that the vehicle's final assembly took place in America. If you cannot verify this information, select another contractor. Failing to comply with this audit can result in a loss of federal funding.

Vehicle Description

There are two extremes to avoid in writing vehicle specifications. Vague, two-page specifications that list only basics, such as "Transmission-automatic; Seating-12 passengers," will make bidders wary because it gives them no clear idea of what you really need. Be specific. On the other hand, potential bidders may balk when they see 22-page specifications that tell them what color the ribbed rubber floor should be and the type of metal fasteners to use to attach the body exterior to the frame. This detailed approach forces them to repeatedly ask the operator's permission for approved equals (substitutions that do not alter the vehicle significantly but satisfy the performance requirements). You don't want to unnecessarily eliminate vendors. Having to repeatedly seek approved equals permission can transform a vehicle purchase into a long, tedious affair for everyone involved. Try to find a happy medium that covers the important elements but does not go into extensive detail. When writing vehicle specifications, there are five general areas to cover:



1. **Chassis:** vehicle dimensions, engine, cooling system, transmission, gross vehicle weight, axles (how many and what type), shock absorbers, springs, tires, electrical system and ventilation
2. **Body (exterior):** structure, support members, roofing materials, insulation, doors, step-wells and windows
3. **Body (interior):** seating, grab rails, barriers, paneling, flooring, floor plan and ventilation
4. **Equipment (standard):** mirrors, lights, heaters, windshield wipers and fans
5. **Equipment (special):** back-up alarm, rust proofing, first-aid kit, wheel wrench and jack, fire extinguisher, emergency reflectors, air conditioning, wheelchair lift, wheelchair securement devices and fare box

Technical Specifications vs. Performance Indicators

Use performance indicators whenever possible. These will define your expectations of each component as minimums for specifications rather than specifying brand names, size dimensions, or other measurements.

- Example 1: Heater
 - Technical Specification: “An inline cutoff valve shall be installed in the engine compartment and red-tagged. The combined BTU rating of all heaters shall be a minimum of 140,000 BTUs.”
 - Performance Indicator: “Heater will sustain 60 degrees F (plus or minus 3 degrees) inside the vehicle when outside temperature is 0 degrees F ambient.”
- Example 2: Air conditioner
 - Technical Specification: “Air conditioner must be 2,000 BTUs with skirt-mounted condenser.”
 - Performance Indicator: “Air conditioner must be sufficient to reduce temperature inside the vehicle from 90 degrees F (plus or minus 3 degrees) to 75 degrees F (plus or minus 3 degrees) within 30 minutes.”

If you decide to use performance specifications, you will need a method for determining that the specifications have been met. Specifications will vary depending on the type of vehicle you choose. Once you have decided to write specifications, do not feel as if you have to reinvent the wheel—there are full sets of specifications for all types of vehicles available for your review. It is invaluable to be able to refer to someone else’s specifications when writing your own. The American Association of State Highway and Transportation Officials (AASHTO) Multi-state Technical Assistance Project (MTAP) can provide state vehicle specifications for 10 types of vehicles, and the American Public Transportation Association has a manual on purchase guidelines.

Consider your entire fleet when determining specifications. The more uniform your fleet, the more control you will have over mechanics’ training and maintenance and parts costs. Involving your system insurer may provide additional criteria. A discussion of safety and risk management issues can further define your best options.



4. The Bid Process

Process for Approved Equals, Clarifications and/or Exceptions

Each manufacturer has a different way of producing a vehicle and certain items may not fit your specifications. You may find that different options are acceptable. A pre-bid meeting provides the opportunity for bidders to fully understand what you want, and for you to fully understand what the bidders can provide. In this forum, the issue of “approved equals” can be addressed and resolved, ensuring that all bidders are bidding on the same end product – the vehicle you want!

Protest/Appeal Procedures

Be prepared for protest of your decisions on approved equals or on contract awards, and design a procedure for submitting and resolving them. Allow enough time to review the protest and resolve it before bids are opened. Contract award protests use similar procedures. It is mandatory that you have an appeal process in place. Your agency should hear the first appeal, with any subsequent appeals referred to the county or state transportation authority if you are using their funds. Allow ample time in your procurement timetable for protests and appeals to be heard.

Delivery Schedule

Include a clear schedule of when you expect to receive the vehicles. Late-delivery penalties may encourage timely delivery of your vehicle, but be sure your schedule is realistic.

Bid Sheet

A form should be included that briefly describes the vehicle (if you are purchasing more than one vehicle include an item number) with spaces for the bidder to fill in the unit price, total price and total amount of the bid. This sheet results in an easy-to-read summary for comparison to other bids. The bid sheet should include a space to describe options that may be available on the vehicle.

Performance Bond

You may require that a performance bond be posted by the successful bidder. An agreed-upon amount of money is then set aside by the supplier as collateral – your guarantee of fulfillment of the contract. Although this is an effective way to determine if the bidder can fulfill your contract, it is expensive for the vendor. Some vendors cannot afford one, so you may be eliminating vendors in your area who are capable of building the vehicle you want. Be sure that a performance bond will truly benefit your system before you decide to make it a requirement of the bid process.

If your request for bidding results in just a single bid being submitted, request that the bidder supply a cost analysis document from prior sales of like or similar vehicles. This will provide you with some comparison data that you will lack in the absence of competing bids.



The Right to Reject

You should reserve the right to reject all bids if you think none of them are responsive. A bid can be rejected as nonresponsive for many reasons, including:

- Failing to submit a required part of your bid package
- Making changes in your specifications without prior approval
- Imposing special conditions, such as charges for delivery or discounts for meeting certain conditions
- Not delivering the vehicle(s) within the time frame you have established

Consider your bids carefully before you reject them all. If you do have to reject all bids, review your specifications. Re-advertising the same specifications will probably result in receiving the same type of insufficient bids.

Reviewing bids requires care and attention to detail. First, open your bids at the time and place specified in your IFB, and make sure that they comply with your package. Next, compare the bids with your technical specifications to determine if the bidder is providing the vehicle you specified. Finally, check the price. Re-calculate all of the figures. Do not assume the bidder has added them correctly. If the bidder has met all of your qualifications and evaluations and has offered the lowest price, then you have found your successful bidder.

5. Quality Assurance: Plant and Delivery Inspections

Quality assurance begins with specification writing. When you leave as little as possible open to interpretation, you enhance likelihood that you will get the vehicle that you want. Keep in mind that if an item is not in your specification it will be difficult, costly and perhaps even impossible to ask the vendor for it during the quality assurance stage. If your budget allows, conduct a plant inspection before your vehicles have been delivered. Inspecting vehicles at this stage will allow you to see items that are not accessible once the vehicle has been delivered (such as the rollover cage in the raised roof of a van or the steel structure in the body of a small bus). You may also find some items that are unacceptable. It will be easier and far less costly to the vendor to make changes at this stage. A note to grant recipients: If you are utilizing FTA funds in the purchase of 10 or more vehicles at one time, an in-plant inspection is mandatory during production.

The ideal time for a plant inspection is when one of your vehicles has been completely finished and others are on the assembly line in various stages of production. You can see how your vehicles are built from chassis to completed product. Conducting a plant inspection in this manner will take you two or three days. Even if you do a plant inspection, it is still vitally important to conduct a thorough inspection of your vehicle once it has been received at your location. Hoses may have worked loose en route from the plant, or the vendor may not have corrected everything you considered unacceptable. Be certain your vehicle is in road-worthy condition by performing a thorough inspection once the vehicle is



delivered to you. If your budget does not allow for a plant inspection, don't be overly concerned. By signing the contract, the vendor has certified that the vehicle will meet your specifications. Do not pay for the vehicle until it has passed your rigorous quality assurance inspection. Every item on your inspection checklist must be verified as acceptable before you complete payment for the vehicle.

To develop your quality assurance checklist, begin by listing the make of vehicle, model year, vehicle identification number, color of vehicle, name of inspector, delivery date, acceptance date (not always the day you receive the vehicle) and mileage. This step will help you account for which vehicles have been inspected and will provide you with an accurate record for each vehicle. For the next step, simply go through your specifications and briefly list each item. Leave room for comments; they are quite valuable, and once you have returned to your desk, you may not remember what you saw that was unacceptable.

Inspection

When doing the inspection, make certain that:

- All auxiliary components, such as wheelchair lifts/securements and air conditioners, are on the vehicle and working properly
- The seating configuration is as specified, including designated mobility-aid seating areas
- All chassis components are as specified
- The vehicle is properly undercoated and rust-proofed
- All manuals and warranty information are included
- The vehicle does not leak from windows, doors or seams
- The vehicle meets all ADA requirements

Once again, make use of all the information that is currently available. Contact state and federal resource offices. Ask manufacturers for their specifications. Contact transit systems that are currently using vehicles of the types you are considering and solicit their feedback. Don't be shy about doing everything you possibly can to make the best possible decision for your system and your customers.



APPENDIX A

ACRONYMS AND KEY DEFINITIONS



Appendix A: Acronyms and Key Definitions

Acronyms

A&E	Architecture and Engineering
AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
BTU	British thermal unit
CDL	Commercial drivers license
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
EPA	Environmental Protection Agency
FTA	Federal Transit Administration
IFB	Invitation for Bids
ITS	Intelligent Transportation Systems
JARC	Job Access and Reverse Commute
MPO	Metropolitan Planning Organization
MTAP	Multi-State Technical Assistance Project
PTT	Public Transit Team
RFP	Request for Proposals
RFQ	Request for Qualifications
RTAP	Rural Transit Assistance Program
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Act – A Legacy for Users
UDOT	Utah Department of Transportation
UUCP	Utah Unified Certification Program
USC	United States Code
USDOL	United States Department of Labor
USDOT	United States Department of Transportation
WSCA	Western States Contracting Alliance



Key Definitions

Architecture and Engineering (A&E): Architecture and Engineering (A&E) services

Authorized Entities: Typically public agencies that manage their own procurement needs or have been approved to do so.

Competitive Proposal: A generally accepted procurement method in which multiple sources submit proposals in response to a request for proposals (RFP) or request for qualifications (RFQ). This method of procurement is appropriate when the nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal. An RFP or RFQ typically involves more than a request for the price. Other requested information may include basic corporate information and history, financial information (can the company deliver without risk of bankruptcy), technical capability (used on major procurements of services, where the item has not previously been made or where the requirement could be met by varying technical means), product information such as stock availability and estimated completion period, and customer references that can be checked to determine a company's suitability.

Contract: A mutually binding legal agreement obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.

Contractor: An organization or individual that contracts with another organization or individual to provide a specific good or service. FTA's use of the term "third party contractor" refers to a subrecipient's contractor, being an organization or individual that has entered into a legal contract with an applicant or subrecipient.

Cooperative Agreement: Federally awarded assistance to a subrecipient to support a specific project; FTA maintains an active role or has substantial control.

Equitable Distribution: The act of distributing purchases among local suppliers.

Fair and Reasonable: The price point for goods or services that is fair to both parties involved in the transaction. This amount is based upon the agreed-upon conditions, promised quality, and timeliness of contract performance.

Federal Clauses: Specific clauses required in contracts for goods and services using FTA funds. Requirements and applicability vary by type of procurement.



Independent Cost Estimate: A good, realistic projection of the expected cost/price; it should be completed prior to the solicitation being released.

Invitation for Bids (IFB): IFBs usually include a copy of the specifications for a proposed purchase, instructions for preparation of bids, and the conditions of purchase, delivery, and payment schedule. The IFB also designates the date and time of bid opening. Following receipt and evaluation of the bids, a contract is usually awarded to the lowest priced bidder, determined to be responsive and responsible by the contracting officer.

Micro-Purchase: A purchase that amounts to less than \$3,000.

Non-competitive Proposal: A procurement method in which a single source is solicited for a proposal.

Recipient/Grantee: Used interchangeably within this document, recipient and grantee refer to the entity that receives federal assistance directly from FTA to support the project. The term *recipient* encompasses FTA grantees that receive federal assistance directly from FTA through a grant and FTA recipients that receive federal assistance directly from FTA through a cooperative agreement.

Request for Proposals (RFP): An RFP is an announcement, often by the government agency, of a willingness to consider proposals for the performance of a specified project or program component.

Request for Qualifications (RFQ): An RFQ is a procurement tool routinely used by state and local governments and the private sector to select partners in major systems acquisitions, mainly those involving real estate development transactions. This approach differs from the traditional request for proposals approach in that it places greater emphasis on the actual qualifications of the potential contractor—his or her track record—rather than how well the potential contractor responds to detailed project specifications and requirements.

Sealed Bid: A generally accepted procurement method in which bids are publicly solicited, and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

Small Purchase: A purchase between \$3,000 and \$5,000 or between \$3,000 and \$50,000, depending upon a subrecipient's classification by UDOT PTT as authorized or unauthorized.

Solicitation: A request for bids or proposals from vendors/contractors to fill a specific need.



Subrecipient: Any entity (including agencies, nonprofits, and for-profit organizations) that receives federal assistance through an FTA recipient instead of through FTA directly. The term *subrecipient* also includes the term *subgrantee*, but does not include *third party contractor* or *third party subcontractor*. Subrecipients that are public entities or public contractors must comply with FTA requirements that apply to states or the recipient. Subrecipients that are private nonprofit or for-profit entities must comply with all the requirements of FTA Circular 4220.1F.

Third Party Contractor/Subcontractor: An outside expert or service provider utilized by, and under the direction of, a subrecipient that assists or completes a specific project.

Unauthorized Entities: Typically non-governmental entities that have not been approved by UDOT PTT to manage their procurement needs.



APPENDIX B

FEDERAL CONTRACT CLAUSES – OVERVIEW AND RECOMMENDED CONTRACT LANGUAGE



Appendix B: Federal Contract Clauses – Overview and Recommended Contract Language

This appendix includes information regarding clauses found in contracts utilizing FTA funding. The clauses are outlined in the table below according to procurement type and cost threshold. Micro-purchases are not included in the table, except Davis-Bacon requirements that apply to construction contracts over \$2,000. Note that some clauses are utilized in all contract types and funding while others are related to a cost threshold or contract type.

Following the table, each clause is further discussed, including a clause overview and recommended contract language (provided in a shaded box for each clause). Within the recommended contract language, text within brackets will vary among contracts and should be filled in with contract-specific text. **Also, individual cases may call for additional/different language.** The clauses appear in the same order they are listed in the table below.

Table 1: Required Federal Clauses by Procurement Type and Threshold

Type of Procurement					
Clause	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (By Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims, Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>10,000	>10,000	>10,000	>10,000	>10,000
Civil Rights (Title VI, EEO, ADA)	All	All	All	All	All
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000



Type of Procurement					
Clause	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel	For property transported by ocean vessel	For property transported by ocean vessel
Fly America	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Title 18 (Sec 874)				All	
Copeland Anti-Kickback Act – Title 40 (Sec 3145)				>\$2,000	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All



Type of Procurement					
Clause	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Recycled Products*		For items designated by EPA, when procuring \$10,000 or more per year		For items designated by EPA, when procuring \$10,000 or more per year	For items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	All	All	All	All	All
Notification of Federal Participation for States **	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
* See http://www.epa.gov/osw/inforesources/pubs/orientat/rom51.pdf ** Applies to the state only – notice to public indicating FTA assistance					

No Federal Government Obligations to Third Parties (By Use of a Disclaimer)

Clause Overview

No statutes or regulations govern this concept; however, it is applicable to all contracts. This concept should be communicated to all parties to the contract. The federal government has no contractual liability to third parties unless the federal government provides express written consent otherwise.

Recommended Contract Language

No Federal Government Obligations to Third Parties

1. [Insert Purchaser] and [insert Contractor] acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the [insert Purchaser], [insert Contractor], or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. [Insert Contractor] agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.



False Statements or Claims, Civil and Criminal Fraud (31 USC 3801 et seq., 49 CFR 31, 18 USC 1001, 49 USC 5307)

Clause Overview

This requirement is applicable to all contracts except micro-purchases. This clause requires that the contractor certifies the truthfulness and accuracy of any statement the contractor has made, makes, may make, or causes to be made pertaining to the applicable contract or the federally funded project for which the contract work is being performed. The federal government reserves the right to impose applicable and appropriate penalties on the contractor should any fraudulent or false statements, claims, etc., be made by the contractor. This requirement flows down to contractors and subcontractors who make, present, or submit covered claims or statements.

Recommended Contract Language

False Statements or Claims, Civil and Criminal Fraud

1. [Insert Contractor] acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, [insert Contractor] certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, [insert Contractor] further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on [insert Contractor] to the extent the Federal Government deems appropriate.
2. [Insert Contractor] also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on [insert Contractor], to the extent the Federal Government deems appropriate.
3. [Insert Contractor] agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



Access to Third Party Contract Records (49 USC 5325, 49 CFR 18.36, 49 CFR 633.17)

Clause Overview

This clause applies to all contracts except micro-purchases. The recipient will require any and all subrecipients, third party contractors, and third party subcontractors to provide the U.S. secretary of transportation, the comptroller general of the United States, the state, or their authorized representatives to inspect, upon request, all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the recipient and its subrecipients pertaining to the project.

Recommended Contract Language

Access to Third Party Contract Records

1. Where the Purchaser is not a state but a local government and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 CFR 18.36(i), [insert Contractor] agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of [insert Contractor] that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. [Insert Contractor] also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to [insert Contractor]'s records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs at 49 USC 5307, 5309, or 5311.
2. Where the Purchaser is a state and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, [insert Contractor] agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to [insert Contractor]'s records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309, or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, [insert Contractor] agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers, and records of [insert Contractor] that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(continued on following page)

**Recommended Contract Language****Access to Third Party Contract Records (cont'd)**

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, [insert Contractor] shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. [Insert Contractor] agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. [Insert Contractor] agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case [insert Contractor] agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Changes to Federal Requirements (49 CFR 18)**Clause Overview**

The federal changes requirement applies to all contracts except micro-purchases. The contractor must comply with all applicable FTA regulations, requirements, procedures, and directives, including any amendments or changes to these regulations that may occur during the term of the contract. This requirement flows down to each applicable changed requirement and the applicable parties of such.

Recommended Contract Language**Changes to Federal Requirements**

[Insert Contractor] shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. [Insert Contractor]'s failure to so comply shall constitute a material breach of this contract.



Termination (49 USC 18, FTA Circular 4220.1F)

Clause Overview

These clauses ensure that either or both parties have the right to terminate the contract under certain circumstances. Generally, termination clauses describe breach of contract events that trigger the right to terminate the contract (for example, nonpayment of royalties). Termination clauses also describe the methods of giving notice of exercise of the termination right, and whether the breaching party must be given an opportunity to cure the breach before the other party can terminate the contract. The termination (i.e., to end a contract prior to project finalization) requirements apply to all contracts that exceed \$10,000, except for nonprofit organizations and higher learning institutions. In the case of nonprofit organizations and higher learning institutions, termination requirements apply to contracts that exceed \$100,000. Regulations state that provisions regarding termination for cause and termination for convenience must be included in contracts. See below for specific contract language.

Termination – For Convenience (General Provision)

Clause Overview

Termination for convenience clauses grant the owner the ability to terminate a contract at their own convenience, even if the contractor did nothing wrong.

Recommended Contract Language

Termination – For Convenience (General Provision)

[Insert Recipient] may terminate this contract, in whole or in part, at any time by written notice to [insert Contractor] when it is in the Government's best interest. [Insert Contractor] shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. [Insert Contractor] shall promptly submit its termination claim to [insert Recipient] to be paid to [insert Contractor]. If [insert Contractor] has any property in its possession belonging to [insert Recipient], [insert Contractor] will account for the same and dispose of it in the manner [insert Recipient] directs.



Termination - By Either Party

Clause Overview

Either party to an agreement may terminate the agreement if the other party to the agreement fails to fulfill its obligations, as set forth within a specific contract. Written notice of the intent to terminate is required, specifying reasons supporting the termination.

Recommended Contract Language

Termination (By Either Party)

Either party may terminate for failure of the other party to fulfill its obligations, as set forth within a specific contract. Reasonable allowances will be made for circumstances beyond the control of [insert Contractor] or [insert Recipient]. Written notice of the intent to terminate is required and shall specify the reasons supporting termination.

Termination - For Default

Clause Overview

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract. The default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement.

Recommended Contract Language

Termination – For Default

If [insert Contractor] does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, [insert Contractor] fails to perform in the manner called for in the contract, or if [insert Contractor] fails to comply with any other provisions of the contract, [insert Recipient] may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on [insert Contractor] setting forth the manner in which [insert Contractor] is in default. [Insert Contractor] will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by [insert Recipient] that [insert Contractor] had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of [insert Contractor], [insert Recipient], after setting up a new delivery of performance schedule, may allow [insert Contractor] to continue work, or treat the termination as a termination for convenience.



Termination - Opportunity to Cure

Clause Overview

Either party to an agreement may terminate the agreement upon thirty (30) days after prior written notice to the breaching party and the party did not cure the breach within the thirty (30) day period. Any written notice to terminate shall include a detailed statement of the claimed breach.

Recommended Contract Language

Termination – Opportunity to Cure

[Insert Recipient] in its sole discretion may, in the case of a termination for breach or default, allow [insert Contractor] [insert an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If [insert Contractor] fails to remedy to [insert Recipient]'s satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within [ten (10) days] after receipt by [insert Contractor] of written notice from [insert Recipient] setting forth the nature of said breach or default, [insert Recipient] shall have the right to terminate the contract without any further obligation to [insert Contractor]. Any such termination for default shall not in any way operate to preclude [insert Recipient] from also pursuing all available remedies against [insert Contractor] and its sureties for said breach or default.

Termination – Waiver of Remedies for Any Breach

Clause Overview

Termination (Waiver of Remedies for Any Breach) clauses abandon the opportunity for the breaching party to implement remedies to a breach of contract. If a breach occurs, termination would be the course of action.

Recommended Contract Language

Termination – Waiver of Remedies for Any Breach

In the event that [insert Recipient] elects to waive its remedies for any breach by [insert Contractor] of any covenant, term, or condition of this contract, such waiver by [insert Recipient] shall not limit [insert Recipient]'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.



Termination – For Convenience (Professional or Transit Service Contracts)

Clause Overview

Termination for convenience clauses grant the owner the ability to terminate a contract at their own convenience, even when the contractor did nothing wrong.

Recommended Contract Language

Termination – For Convenience (Professional or Transit Service Contracts)

[Insert Recipient], by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, [insert Recipient] shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination – For Default (Supplies and Service)

Clause Overview

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract, specifically regarding supplies and service including failure to deliver supplies or to perform the services within the time specified in the contract. The default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement.

Recommended Contract Language

Termination – For Default (Supplies and Service)

If [insert Contractor] fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if [insert Contractor] fails to comply with any other provisions of this contract, [insert Recipient] may terminate this contract for default. [Insert Recipient] shall terminate by delivering to [insert Contractor] a Notice of Termination specifying the nature of the default. [Insert Contractor] will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that [insert Contractor] was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of [insert Recipient].



Termination – For Default (Transportation Services)

Clause Overview

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract, specifically regarding transportation services including failure to pick up the commodities or to perform the services (including delivery) within the time specified in the contract. The default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement.

Recommended Contract Language

Termination – For Default (Transportation Services)

If [insert Contractor] fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if [insert Contractor] fails to comply with any other provisions of this contract, [insert Recipient] may terminate this contract for default. [Insert Recipient] shall terminate by delivering to [insert Contractor] a Notice of Termination specifying the nature of default. [Insert Contractor] will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while [insert Contractor] has possession of [insert Recipient]'s goods, [insert Contractor] shall, upon direction of [insert Recipient], protect and preserve the goods until surrendered to [insert Recipient] or its agent. [Insert Contractor] and [insert Recipient] shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that [insert Contractor] was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of [insert Recipient].



Termination – For Default (Construction Services)

Clause Overview

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract, specifically regarding construction services including failure or refusal to complete the work with the diligence that would ensure completion within the timeframe specified in the contract. The default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement.

Recommended Contract Language

Termination – For Default (Construction Services)

If [insert Contractor] refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if [insert Contractor] fails to comply with any other provisions of this contract, [insert Recipient] may terminate this contract for default. [Insert Recipient] shall terminate by delivering to [insert Contractor] a Notice of Termination specifying the nature of the default. In this event, [insert Recipient] may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. [Insert Contractor] and its sureties shall be liable for any damage to [insert Recipient] resulting from [insert Contractor]'s refusal or failure to complete the work within specified time, whether or not [insert Contractor]'s right to proceed with the work is terminated. This liability includes any increased costs incurred by [insert Recipient] in completing the work.

[Insert Contractor]'s right to proceed shall not be terminated nor [insert Contractor] charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of [insert Contractor]. Examples of such causes include: acts of God, acts of [insert Recipient], acts of another Contractor in the performance of a contract with [insert Recipient], epidemics, quarantine restrictions, strikes, freight embargoes; and
2. [Insert Contractor], within [10] days from the beginning of any delay, notifies [insert Recipient] in writing of the causes of delay. If in the judgment of [insert Recipient], the delay is excusable, the time for completing the work shall be extended. The judgment of [insert Recipient] shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of [insert Contractor]'s right to proceed, it is determined that [insert Contractor] was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of [insert Recipient].



Termination – for Default (A&E)

Clause Overview

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract, specifically regarding A&E services. The default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement.

Recommended Contract Language

Termination – For Default (A&E)

[Insert Recipient] may terminate this contract, or any portion of it, by serving a Notice of Termination on [insert Contractor]. The notice shall state whether the termination is for convenience of [insert Recipient] or for the default of [insert Contractor]. If the termination is for default, the notice shall state the manner in which [insert Contractor] has failed to perform the requirements of the contract. [Insert Contractor] shall account for any property in its possession paid for from funds received from [insert Recipient], or property supplied to [insert Contractor] by [insert Recipient]. If the termination is for default, [insert Recipient] may fix the fee, if the contract provides for a fee, to be paid [insert Contractor] in proportion to the value, if any, of work performed up to the time of termination. [Insert Contractor] shall promptly submit its termination claim to [insert Recipient] and the parties shall negotiate the termination settlement to be paid [insert Contractor].

If the termination is for the convenience of [insert Recipient], [insert Contractor] shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for default, [insert Recipient] determines that [insert Contractor] has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of [insert Contractor], [insert Recipient], after setting up a new work schedule, may allow [insert Contractor] to continue work, or treat the termination as a termination for convenience.

**Civil Rights (Title VI, EEO, ADA) (29 USC 623, 42 USC 2000, 42 USC 6102, 42 USC 12112, 42 USC 12132, 49 USC 5332, 29 CFR 1630, 41 CFR 60 et seq.)**Clause Overview

Civil rights requirements apply to all contracts. The contractor will not discriminate against any employee or applicant for employment on account of race, color, creed, nationality, sex, age, or disability. The contractor must comply with applicable federal implementing regulations and any other implementing requirements that FTA may issue. See the referenced regulations for specific details regarding each of these requirements. Civil rights requirements flow down to all third party contractors at every tier.

Recommended Contract Language**Civil Rights (Title VI, EEO, ADA)**

1. Title VI – During the performance of this contract, [insert Contractor], for itself, its assignees, and successors in interest, agrees as follows:
 - a) Compliance with Regulations: [Insert Contractor] shall comply with the Regulation relative to nondiscrimination in federally assisted programs of the Department of Transportation 49 CFR 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
 - b) Nondiscrimination: [Insert Contractor], with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. [Insert Contractor] shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - c) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by [insert Contractor] for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by [insert Contractor] of [insert Contractor]'s obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(continued on following page)



Recommended Contract Language

Civil Rights (Title VI, EEO, ADA) (cont'd)

- d) Information and Reports: [Insert Contractor] shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by [insert Recipient] or [insert name of appropriate administration] to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information [insert Contractor] shall so certify to [insert Recipient], or [insert name of appropriate administration], as appropriate, and shall set forth what efforts it has made to obtain the information.
- e) Sanctions for Noncompliance: In the event of [insert Contractor]'s noncompliance with the nondiscrimination provisions of this contract, [insert Recipient] shall impose such contract sanctions as it or [insert name of appropriate administration] may determine to be appropriate, including, but not limited to:
 - i. Withholding of payments to [insert Contractor] under the contract until [insert Contractor] complies, and/or
 - ii. Cancellation, termination, or suspension of the contract, in whole or in part.
- f) Incorporation of Provisions: [Insert Contractor] shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

[Insert Contractor] shall take such action with respect to any subcontractor procurement as [insert Recipient] or [insert name of appropriate administration] may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, [insert Contractor] may request [insert Recipient] to enter into such litigation to protect the interest of [insert Recipient], and, in addition, [insert Contractor] may request the United States to enter into such litigation to protect the interests of the United States.

Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, and federal transit law at 49 USC 5332, [insert Contractor] agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, [insert Contractor] agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

(continued on following page)

**Recommended Contract Language****Civil Rights (Title VI, EEO, ADA) (cont'd)**

2. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
 - a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and federal transit laws at 49 USC 5332, [insert Contractor] agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 60 et seq., (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. [Insert Contractor] agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, [insert Contractor] agrees to comply with any implementing requirements FTA may issue.
 - b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and federal transit law at 49 USC 5332, [insert Contractor] agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, [insert Contractor] agrees to comply with any implementing requirements FTA may issue.
 - c) Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, [insert Contractor] agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. In addition, [insert Contractor] agrees to comply with any implementing requirements FTA may issue.
3. [Insert Contractor] also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.



Disadvantaged Business Enterprises (DBEs) (49 CFR 26)

Clause Overview

The DBE requirements apply to all USDOT assisted contracting activities, which include those funded by FTA. These requirements pertain to FTA recipients who receive at least \$250,000 in FTA capital and operating funds, exclusive of funds for transit vehicle purchases, or \$100,000 in FTA planning funds. The requirements flow down to subrecipients.

The subrecipient federal fiscal year DBE goal is set by UDOT in an attempt to match projected procurements with available qualified disadvantaged businesses. These goals are considered pertinent to any subrecipient procurement process. If a specific DBE goal is assigned to a contract, it will be clearly stated in the DBE section of the bid and contract, and if the contractor is found to have failed to exert reasonable good faith efforts to involve DBEs in the work provided, the subrecipient may declare the contractor non-compliant and in breach of contract.

If a goal is not stated in the DBE section it will be understood that no specific goal has been assigned to the contract, DBE participation is not required and a good faith effort is not necessary. However, DBE inclusion is always recommended.

If a specific DBE goal is associated with a project, DBEs must have the opportunity to participate. To ensure that DBEs have an equal opportunity to participate in whole or in part of the contract, contractors must take the necessary steps to provide DBEs with an equal opportunity to compete for and perform subcontracts. The contractor must not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts. DBE involvement in all phases of subrecipient procurement activities is encouraged.

If there is a stated goal, the contractor will keep records and documents to indicate compliance. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the subrecipient and will be submitted to the subrecipient upon request (consult your project manager for details regarding DBE documentation). The subrecipient will provide affirmative assistance as may be reasonable and necessary to assist the contractor in implementing the programs for DBE participation. The assistance may include the following:

- Identification of qualified DBEs
- Available listings of minority assistance agencies
- Holding bid conferences to emphasize requirements



Recommended Contract Language

Disadvantaged Business Enterprises (DBEs)

1. This contract is subject to the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10 percent. The agency's overall goal for DBE participation is ___ percent. A separate contract goal [of ___ percent DBE participation has] [has not] been established for this procurement.
2. [Insert Contractor] shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. [Insert Contractor] shall carry out applicable requirements of 49 CFR 26 in the award and administration of this DOT assisted contract. Failure by [insert Contractor] to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as [insert agency name] deems appropriate. Each subcontract [insert Contractor] signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. [If a separate contract goal has been established, use the following.] Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following *[concurrent with and accompanying sealed bid or concurrent with and accompanying an initial proposal or prior to award]*:
 - a) The names and addresses of DBE firms that will participate in this contract;
 - b) A description of the work each DBE will perform;
 - c) The dollar amount of the participation of each DBE firm participating;
 - d) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - e) Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
 - f) If the contract goal is not met, evidence of good faith efforts to do so.

[Insert Bidders/Offerors] must present the information required above *[as a matter of responsiveness or with initial proposals or prior to contract award]* (see 49 CFR 26.53(3)).

[If no separate contract goal has been established, use the following.] The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(continued on following page)



Recommended Contract Language

Disadvantaged Business Enterprises (DBEs) (cont'd)

4. [Insert Contractor] is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after [insert Contractor]'s receipt of payment for that work from [insert agency name]. In addition, *[the Contractor may not hold retainage from its subcontractors or the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or the Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by [insert agency name] and Contractor's receipt of the partial retainage payment related to the subcontractor's work].*
5. [Insert Contractor] must promptly notify [insert agency name], whenever a DBE subcontractor performing work related to this contract fails to perform or complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the amount of work remaining. [Insert Contractor] may not terminate any DBE subcontractor and perform that work through its own forces or those of a non-DBE without prior written consent of [insert agency name].

Incorporation of FTA Terms (FTA Circular 4220.1F)

Clause Overview

All contracts must incorporate certain FTA terms. Contract stipulations will include certain standard terms and conditions required by the Department of Transportation. FTA-mandated terms have supremacy in the event of a conflict with other provisions included in the agreement. The contractor must not perform any act, fail to perform any act, etc., that would cause the subrecipient to violate FTA terms and conditions.

Recommended Contract Language

Incorporation of FTA Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. [Insert Contractor] shall not perform any act, fail to perform any act, or refuse to comply with any [insert Grantee] requests which would cause [insert Grantee] to be in violation of the FTA terms and conditions.



Suspension and Debarment (49 CFR 18, Executive Order 12549)

Clause Overview

The debarment and suspension requirements apply to contracts exceeding \$100,000. Recipients of FTA funds are prohibited from contracting for goods or services from organizations or contractors who have been debarred or suspended from receiving federally assisted contracts. Recipients must certify that they will not enter into a contract of \$100,000 or more with any debarred or suspended contractor.

Contractors must certify to the recipient that they and their subcontractors are not debarred or suspended from participation in a federally assisted contract. Also, subrecipients must certify through “principals” (such as a director, owner, partner, key employee, or other individual who has primary management or supervisory responsibilities, and an individual who has critical influence or substantial control over a covered transaction, whether or not employed by the subrecipient) that they are not excluded from federally assisted transactions. The subrecipient must also certify that none of its third party contractors or subcontractors are debarred, suspended, ineligible, or excluded from suspended, ineligible, or voluntary excluded from participation on federally assisted transactions. If any circumstances change (such as new personnel with a contractor, convictions, etc.), or if a subrecipient learns that a certification was invalid, it is the subrecipient’s responsibility to inform FTA accordingly. The following must be ensured:

- The subrecipient must ensure that appropriate procedures are in place to obtain required certification from principals, contractors, and subcontractors.
- Proper certifications must be included in subrecipient procurement documents and contracts, and completed copies must be included the procurement or grant files.
- Certifications regarding debarment and suspension are required of principals of subrecipients and major third party contractors (for contracts exceeding \$100,000 with multiple subcontractors).

**Recommended Contract Language****Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR 29. As such, [insert Contractor] is required to verify that none of [insert Contractor], its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

[Insert Contractor] is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by [insert agency name]. If it is later determined that [insert Bidder or Proposer] knowingly rendered an erroneous certification, in addition to remedies available to [insert agency name], the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. [Insert Bidder or Proposer] agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. [Insert Bidder or Proposer] further agrees to include a provision requiring such compliance in its lower tier covered transactions.



Buy America (49 CFR 661.6, 661.7, 661.13)

Clause Overview

Buy America requirements apply to all rolling stock, steel, iron, or manufactured goods costing more than \$100,000. The subrecipient must obtain a certification of compliance or non-compliance with the requirements with each bid or offer. Requirements include:

- **Steel and iron:** For all construction materials and infrastructure projects, all steel and iron manufacturing must occur in the United States.
- **Manufactured products:** 100 percent of the product must be manufactured in the United States. Foreign subcomponents are allowed.
- **Construction contracts:** FTA treats construction like a “manufactured product.” It must also satisfy the steel and iron requirements.
- **Rolling stock:** The cost of components and subcomponents produced in the United States must be more than 60 percent of the cost of all components and final assembly must take place in the United States. 49 USC 5323(j)(2)(C) and 49 CFR 661.11 is a road map for subrecipients and contractors to follow when determining compliance with the domestic content requirements for rolling stock.
- Contractors are required to certify that the materials provided either comply or do not comply with Buy America requirements. These certifications should be retained in the contract file and be available for inspection upon request.
- **Notice requirements:** A contract of \$100,000 or above for Buy America products requires that a solicitation include “an appropriate notice of the Buy America provision.” subrecipients have satisfied this requirement with the following notice:

Buy America Provision. This solicitation and the resulting contract are subject to the Buy America requirements. These regulations require, as a matter of responsiveness, that the bidder or offeror submit with its offer a completed certification in accordance with Part 661.6 or 661.12, as appropriate. These certifications are set forth in this solicitation at [identify where the certifications are].

- **Certification requirements:** A requirement, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12, for rolling stock (including train control, traction power, and communication equipment).

**Recommended Contract Language****Buy America**

[Insert Contractor] agrees to comply with 49 USC 5323(j) and 49 CFR 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA, or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Bidder or Offeror must submit to the FTA recipient the appropriate Buy America certification (see Appendix E) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Resolution of Disputes, Breaches, or Other Litigation (49 CFR 18, FTA Circular 4220.1F)**Clause Overview**

All contracts exceeding \$100,000 must contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses.

**Recommended Contract Language****Resolution of Disputes, Breaches, or Other Litigation**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes – Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of [insert Recipient]'s [insert title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, [insert Contractor] mails or otherwise furnishes a written appeal to the [insert title of employee]. In connection with any such appeal, [insert Contractor] shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [insert title of employee] shall be binding upon [insert Contractor] and [insert Contractor] shall abide by the decision.

Performance During Dispute – Unless otherwise directed by [insert Recipient], [insert Contractor] shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages – Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between [insert Recipient] and [insert Contractor] arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which [insert Recipient] is located.

Rights and Remedies – The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by [insert Recipient], [insert Architect] or [insert Contractor] shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.



Lobbying (49 CFR 20)

Clause Overview

Lobbying requirements apply to construction, A&E, acquisition of rolling stock, professional service contracts, operational service contracts, and/or turnkey contracts that exceed \$100,000. Recipients of federal funds, grants, or cooperative agreements may not pay any person for influencing or attempting to influence an employee of federal agency or office in connection with:

- Awarding any federal contract
- Making of any federal grant
- Making of federal loans
- Entering into cooperative agreements
- The continuation/renewal/modification of grants, loans, and cooperative agreements

Grants exceeding \$100,000 must certify compliance with restrictions on lobbying before they can receive funds. Subrecipients are required to impose the lobbying restriction provisions on their contractors as well. See Appendix E for the certification regarding lobbying.

- Certifications must be completed and returned with the bid or proposal.
- If non-federal funds have been used to support lobbying activities, the Standard Form LLL, Disclosure of Lobbying Activities, must be completed as well (see Appendix B). See 49 CFR 19 and 20 for further information regarding Standard Form LLL.

Recommended Contract Language

Lobbying

Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC 1601 et seq.] – Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20, New Restrictions on Lobbying. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the Recipient.



Clean Air (42 USC 7401 et seq., 40 CFR 15.61, 49 CFR 18)

Clause Overview

The Clean Air requirements apply to all contracts that exceed \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The contractor must comply with applicable standards, regulations, and orders issued pursuant to the Clean Air Act (42 USC 7401). The contractor will report any violations to the purchaser, who will, in turn, assure appropriate notification of each violation is reported to FTA and the regional Environmental Protection Agency (EPA) office. The contractor will also include these requirements in any subcontract that exceeds \$100,000 financed in whole or part with the federal funds provided by FTA.

Recommended Contract Language

Clean Air

1. [Insert Contractor] agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. [Insert Contractor] agrees to report each violation to [insert Purchaser] and understands and agrees that [insert Purchaser] will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. [Insert Contractor] also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Clean Water (33 USC 1251 et seq.)

Clause Overview

The Clean Water requirements apply to all contracts that exceed \$100,000. The contractor must comply with applicable standards, regulations, and orders issued pursuant to the Federal Water Pollution Control Act (33 USC 1251 et seq.). The contractor will report any violations to the purchaser, who will in turn assure appropriate notification of each violation is reported to FTA and the regional EPA office.

Recommended Contract Language

Clean Water

1. [Insert Contractor] agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. [Insert Contractor] agrees to report each violation to [insert Purchaser] and understands and agrees that [insert Purchaser] will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. [Insert Contractor] also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.



Cargo Preference (46 USC 1241, 46 CFR 381)

Clause Overview

The cargo preference requirement applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels. These requirements do not apply, however, to micro-purchases. Recipients/subrecipients transporting equipment, materials, or commodities by ocean vessels must comply with 46 USC 1241 and 46 CFR 381. The recipient/subrecipient must use privately owned United States commercial vessels to ship at least 50 percent of the gross tonnage involved to the extent that such vessels are available at fair and reasonable rates. Recipients/subrecipients must also submit a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo. For shipments originating in the United States., this documentation must be furnished within 20 working days of the date of loading. For shipments originating outside the United States, this documentation must be furnished within 30 working days of the date of loading. Finally, the contractor must include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Recommended Contract Language

Cargo Preference

[Insert Contractor] agrees: a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.



Fly America (49 USC 40118, 41 CFR 301–10)

Clause Overview

The Fly America clause applies to federally funded international air transport of people or goods. Contractors must comply with the Fly America clause, which requires recipients/subrecipients to use U.S. air carriers when the air transport of such goods or people is federally funded. Transportation on a foreign carrier is permissible in the following circumstances: 1) the transportation is provided under a bilateral or multilateral air transportation agreement to which both the U.S. government and the government of the foreign carrier are parties (and which meets the Fly America Act requirements, as determined by the Federal Department of Transportation), or 2) the transportation is provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. If a foreign carrier is used, the contractor must submit a certificate or memorandum that adequately explains why the use of the foreign carrier was necessary or why a U.S. carrier was not available. A certificate of compliance with Fly America requirements must be provided.

Recommended Contract Language

Fly America

[Insert Contractor] agrees to comply with 49 USC 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 CFR 301-10, which provide that Recipients and subrecipients of federal funds and their Contractors are required to use United States Flag air carriers for U.S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. [Insert Contractor] shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a United States Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. [Insert Contractor] agrees to include the requirements of this section in all subcontracts that may involve international air transportation.



Davis-Bacon Act (40 USC 3141 et seq.)

Clause Overview

The Davis-Bacon Act applies to any construction contract over \$2,000. For the purpose of this act, “construction” includes “actual construction, alteration and/or repair, including painting and decorating.” The recipient must comply with—and assure the compliance of each subrecipient, lessee, third party contractor, or other project participant with—the Davis-Bacon Act. This act provides protection for construction employees. Accordingly, it requires that federally funded construction projects pay workers no less than the local prevailing wages and benefits. See the applicable regulations for a detailed description of the Davis-Bacon Act.

Recommended Contract Language

Davis-Bacon Act

Under 49 USC 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction projects. Thus, the Common Grant Rules specify that third party contracts at any tier exceeding \$2,000 must include provisions requiring compliance with the Davis-Bacon Act, 40 USC 3141 et seq., and implementing DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,” 29 CFR 5. The Davis-Bacon Act requires Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires Contractors to pay wages not less than once a week. The Recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination.

Contract Work Hours and Safety Standards Act (40 USC 3701 et seq., 29 CFR 5)

Clause Overview

The Contract Work Hours and Safety Standards Act applies to construction contracts (and to non-construction projects in very limited cases) that employ “laborer or mechanics on a public work.” These non-construction applications do not typically apply to transit because transit procurements (including rail cars and buses) are deemed “commercial items.” The recipient must comply with—and assure the compliance of each subrecipient, lessee, third party contractor, or other project participant with—the Contract Work Hours and Safety Standards Act, which provides protection for construction employees. The act requires contractors/subcontractors to pay laborers and mechanics one and a half times their basic rate of pay for all hours worked over 40 in a work week. See the applicable regulations for a detailed description of the Contract Work Hours and Safety Standards Act.

**Recommended Contract Language****Contract Work Hours and Safety Standards Act**

1. Overtime requirements – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
2. Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (1) of this section [insert Contractor] and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, [insert Contractor] and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages – [Insert Grantee] shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.



Copeland Anti-Kickback (18 USC 874, 29 CFR 3)

Clause Overview

The Copeland Anti-Kickback Act (Copeland Act) is divided into two sections. Section 1 of the Copeland Act, 18 USC 874, is a criminal statute prohibiting anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 1 applies to all construction contracts irrespective of amount. Section 2 of the Copeland Act, 40 USC 3145, is a civil statute requiring certain employment records to be maintained. Section 2 is administered under USDOL regulations and applies to construction contracts exceeding \$2,000.

Recommended Contract Language

Copeland Anti-Kickback

For all third party construction and repair contracts exceeding \$100,000, the Common Grant Rules require provisions for compliance with the Copeland “Anti-Kickback” Act, as amended, 18 USC 874, and implementing DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 CFR 3. The Act prohibits a Contractor from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 USC 3701(b)(3)(A)(iii), increased the threshold for construction and repair to \$100,000 from \$2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed \$100,000 before these “Anti-Kickback” prohibitions apply to that contract.



Bonding

Clause Overview

Bonding requirements apply to construction contracts or subcontracts that exceed \$100,000. The recipient will comply with the following bonding provisions unless determined otherwise by FTA (in writing). For construction activities, the recipient must provide bid guarantee, contract performance, and payment bonds as provided by federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing. The recipient must also follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing. See below for specific bonding contract language.

Bid Bond Requirements (Construction)

Clause Overview

A bid bond must be issued by a fully qualified surety company acceptable to the recipient and listed as a company currently authorized under 31 CFR 223 as possessing a Certificate of Authority.

The recipient has the right to reject any bid or part of bid. The bidder may not withdraw the bid for a period of 90 days subsequent to the opening of bids without the consent of the recipient. If the bidder withdraws any part or all of the bid within that timeframe without the written consent of the recipient, refuses or is unable to enter into the contract, or refuses or is unable to furnish adequate performance bonds and labor material payment bonds, the bidder must submit his or her bid security to the extent of the recipient's damages.

If the bidder's bid bond is inadequate to recompense the recipient for the damages, the bidder must pay the difference of the bid security and the recipient's total damages.

**Recommended Contract Language****Bid Bond Requirements (Construction)****1. Bid security**

A Bid Bond must be issued by a fully qualified surety company acceptable to [insert Recipient] and listed as a company currently authorized under 31 CFR 223 as possessing a Certificate of Authority as described thereunder.

2. Rights reserved

In submitting this bid, it is understood and agreed by [insert Bidder] that the right is reserved by [insert Recipient] to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of [insert Recipient]. It is also understood and agreed that if the undersigned, [insert Bidder], should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of [insert Recipient], shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of [insert Recipient]'s damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by [insert Recipient] as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense [insert Recipient] for the damages occasioned by default, then the undersigned, [insert Bidder], agrees to indemnify [insert Recipient] and pay over to [insert Recipient] the difference between the bid security and [insert Recipient]'s total damages, so as to make [insert Recipient] whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.



Performance and Payment Bonding Requirements (Construction)

Clause Overview

The contractor is required to obtain performance bonds with a penal amount of 100 percent of the original contract price (unless a lesser amount is determined to be adequate by the recipient). If a contract price is increased, the recipient may require additional performance bond protection, which will generally equal 100 percent of the increase in contract price.

The contractor is also required to obtain payment bonds with penal amounts equaling the following:

- 50 percent of the contract price if the contract price is not more than \$1 million
- 40 percent of the contract price if the contract price is more than \$1 million but less than \$5 million
- 2.5 million if the contract price is more than \$5 million

If the original contract price is \$5 million or less, the recipient may require additional protection if the contract price is increased (as discussed above).

Recommended Contract Language

Performance and Payment Bonding Requirements (Construction)

[Insert Contractor] shall be required to obtain performance and payment bonds as follows:

1. Performance bonds

- a) The penal amount of performance bonds shall be 100 percent of the original contract price, unless [insert Recipient] determines that a lesser amount would be adequate for the protection of [insert Recipient].
- b) [Insert Recipient] may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. [Insert Recipient] may secure additional protection by directing [insert Contractor] to increase the penal amount of the existing bond or to obtain an additional bond.

2. Payment bonds

- a) The penal amount of the payment bonds shall equal:
 - i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii) Two and one half million if the contract price is more than \$5 million.
- b) If the original contract price is \$5 million or less, [insert Recipient] may require additional protection as required by subparagraph (a) if the contract price is increased.



Performance and Payment Bonding Requirements (Non-Construction)

Clause Overview

A contractor may be required to obtain performance and payment bonds when necessary to protect the recipient's interest.

The following situations may warrant a performance bond:

- The recipient's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- A contractor sells assets to or merges with another concern, and the recipient, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- Substantial progress payments are made before delivery of end items starts.
- Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the contractor is required to obtain performance bonds with a penal amount of 100 percent of the original contract price (unless a lesser amount is determined to be adequate by the recipient). If a contract price is increased, the recipient may require additional performance bond protection, which will generally equal 100 percent of the increase in contract price.

A payment bond is required only when a performance bond is required, and if the use of the payment bond is in the recipient's interest. If a payment bond is required, the penal amount of the payment bond should equal the following:

- 50 percent of the contract price if the contract price is not more than \$1 million
- 40 percent of the contract price if the contract price is more than \$1 million but less than \$5 million
- 2.5 million if the contract price is increased

**Recommended Contract Language****Performance and Payment Bonding Requirements (Non-Construction)**

[Insert Contractor] may be required to obtain performance and payment bonds when necessary to protect [insert Recipient]'s interest.

1. The following situations may warrant a performance bond:
 - a) [Insert Recipient] property or funds are to be provided to [insert Contractor] for use in performing the contract or as partial compensation (as in retention of salvaged material).
 - b) A Contractor sells assets to or merges with another concern, and [insert Recipient], after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 - c) Substantial progress payments are made before delivery of end items starts.
 - d) Contracts are for dismantling, demolition, or removal of improvements.
2. When it is determined that a performance bond is required, [insert Contractor] shall be required to obtain performance bonds as follows:
 - a) The penal amount of performance bonds shall be 100 percent of the original contract price, unless [insert Recipient] determines that a lesser amount would be adequate for the protection of [insert Recipient].
 - b) [Insert Recipient] may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. [Insert Recipient] may secure additional protection by directing [insert Contractor] to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when a performance bond is required, and if the use of payment bond is in [insert Recipient]'s interest.
4. When it is determined that a payment bond is required, [insert Contractor] shall be required to obtain payment bonds as follows:
 - a) The penal amount of payment bonds shall equal:
 - i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii) Two and one half million if the contract price is increased.



Advance Payment Bonding Requirements

Clause Overview

Advance payment bonding requirements specify that the contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The recipient will determine the appropriate amount of the advance payment bond necessary for protection.

Recommended Contract Language

Advance Payment Bonding Requirements

[Insert Contractor] may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. [Insert Recipient] shall determine the amount of the advance payment bond necessary to protect [insert Recipient].

Patent Infringement Bonding Requirements (Patent Indemnity)

Clause Overview

The contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the contractor is unknown or doubtful. The recipient will determine the appropriate amount of the patent indemnity for protection.

Recommended Contract Language

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. [Insert Recipient] shall determine the amount of the patent indemnity to protect [insert Recipient].



Warranty of the Work and Maintenance Bonds

Clause Overview

The contractor must warrant to the Recipient and/or architect/engineer that all materials and equipment furnished will be of highest quality, new (unless specified otherwise by the recipient), free from faults and defects, and in conformance with the contract documents. All work not conforming to such standards will be considered defective.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial, and durable construction in all respects. The contractor must guarantee the work against defective materials or faulty workmanship for a minimum period of one (1) year after final payment by the recipient, and must replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the recipient. As additional security, the contractor should, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in a form acceptable to the recipient (written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract). These bonds secure the contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment, and should be written in an amount equal to 100 percent of the contract sum.

**Recommended Contract Language****Warranty of the Work and Maintenance Bonds**

1. [Insert Contractor] warrants to [insert Recipient], [insert Architect and/or Engineer] that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by [insert Recipient], free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by [insert Project Manager], [insert Contractor] shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial, and durable construction in all respects. [Insert Contractor] hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after final payment by [insert Recipient] and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to [insert Recipient]. As additional security for these guarantees, [insert Contractor] shall, prior to the release of final payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to [insert Recipient] written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this contract. These bonds shall secure [insert Contractor]'s obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the contract sum, as adjusted (if at all).



Seismic Safety (42 USC 7701 et seq., 49 CFR 41)

Clause Overview

Seismic safety requirements apply to all contracts for the construction of new buildings or additions to existing buildings. These requirements do not apply, however, to micro-purchases. This clause states that any new building or addition to an existing building will be designed and constructed in accordance with the standards for seismic safety required in Department of Transportation Seismic Safety Regulations 49 CFR 41. Compliance should be certified to the extent required by the regulation. The contractor should ensure that all work performed for the project under the contract complies with these standards and that the certification of compliance is issued for the project.

Recommended Contract Language

Seismic Safety

[Insert Contractor] agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR 41 and will certify to compliance to the extent required by the regulation. [Insert Contractor] also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Transit Employee Protective Arrangements (49 USC 5310, 5311, and 5333, 29 CFR 215)

Clause Overview

When the recipient acquires public transportation services from a third party contractor, the terms of the recipient's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification.

**Recommended Contract Language****Transit Employee Protective Arrangements**

- a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, [insert Contractor] agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC A 5333(b), and USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the USDOL to FTA applicable to the FTA Recipient's project from which federal assistance is provided to support work on the underlying contract. [Insert Contractor] agrees to carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection, however, do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 USC 5310(a)(2), or for projects for nonurbanized areas authorized by 49 USC 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 USC 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 USC 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, [insert Contractor] agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 USC 5333(b), USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the USDOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. [Insert Contractor] agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that USDOL letter.
- c) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas – If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 USC 5311, [insert Contractor] agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by USDOL or any revision thereto.

[Insert Contractor] also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by FTA.



Charter Service Operations (49 USC 5323, 49 CFR 604)

Clause Overview

The charter bus requirements apply to operational service contracts. The requirement states that recipients/subrecipients of FTA funds are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator that is willing and able to provide the service. A recipient/subrecipient can, however, provide charter service if one of the exceptions listed in 49 CFR 604.9 is met. Any services provided under one of these exceptions must be incidental, meaning that it must not interfere with or detract from the provision of mass transportation.

UDOT does not allow funds to be used for charter service.

Recommended Contract Language

Charter Service Operations

UDOT does not allow funds to be used for charter service.

School Bus Operations (49 USC 5323, 49 CFR 605)

Clause Overview

The school bus requirements apply to operational service contracts. The requirement states that a recipient/subrecipient may not “engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions.” If the recipients/subrecipients operate exclusive school bus service under an allowable exemption, they may not use federally funded equipment, vehicles, or facilities.

In general, recipients of FTA grants cannot provide transportation for students and school personnel if that transportation excludes the general public or competes with private school bus operators.

UDOT does not allow FTA funds to be used for school transportation. Also, UDOT also does not allow FTA funds to be used for Head Start transportation.

Recommended Contract Language

School Bus Operations

UDOT does not allow funds to be used for school bus or Head Start services.



Drug Use and Alcohol Misuse and Testing (49 USC 5331, 49 CFR 653 and 654)

Clause Overview

FTA has combined its drug and alcohol testing regulations. Subrecipients must have and enforce an anti-drug policy and training program. Recipients of Sections 5307, 5309, or 5311 funds must have drug and alcohol testing programs to cover all safety-sensitive employees (except maintenance contractors for Section 5311 subrecipients).

The subrecipient's drug and alcohol testing program must cover: marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol. The following testing is required:

- Pre-employment testing (drug testing only)
- Reasonable suspicion testing
- Random testing
- Post-accident testing
- Return to duty/follow-up testing
- Blind performance testing (drug testing only)

All safety-sensitive employees are subject to the testing program, including the following:

- Operators of revenue vehicles
- CDL holders operating non-revenue vehicles
- Mechanics maintaining revenue vehicles or equipment used in revenue service (except contract maintenance workers for Section 5311 subrecipients)
- Employees controlling the movement of revenue vehicles (such as drivers and dispatchers)
- Firearm-bearing police and security personnel
- First-line supervisors whose responsibilities include safety sensitive functions

Subrecipients must comply with the following additional drug and alcohol requirements:

- Subrecipients must maintain a written drug and alcohol policy
- Subrecipients must maintain a training program on drug and alcohol abuse
- Subrecipients must keep records documenting compliance
- Subrecipients must keep records on drug and alcohol testing results
- Subrecipients must supply the drug and alcohol certification to FTA

**Recommended Contract Language****Drug Use and Alcohol Misuse and Testing**

To the extent applicable, [insert Recipient] agrees to comply with the following federal substance abuse regulations:

- a) Drug-Free Workplace: USDOT regulations, “Government-wide Requirements for Drug-Free Workplace (Financial Assistance), 49 CFR 32, that implement the Drug-Free Workplace Act of 1988, 41 USC 701 et seq.
- b) Alcohol Misuse and Prohibited Drug Use: FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR 655, that implement 49 USC 5331.

Patent Rights (37 CFR 401, 49 CFR 18 and 19)**Clause Overview**

Irrespective of the status of the recipient, subrecipient, or third party contractor (for example, a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, 37 CFR 401 (implementing 35 USC 200 et seq.), unless the federal government requires otherwise. Except in the case of an “other agreement” in which the federal government has agreed to take more limited rights, the federal government is entitled to a non-exclusive royalty free license to use the resulting invention or patent to the invention for federal government purposes.

Recommended Contract Language**Patent Rights**

Irrespective of the status of the Recipient, subrecipient, or third party contractor (for example, a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms,” 37 CFR 401 (implementing 35 USC 200 et seq.), unless the Federal Government requires otherwise. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive royalty free license to use the resulting invention or patent to the invention for Federal Government purposes.



Rights in Data and Copyright Requirements (49 CFR 18)

Clause Overview

In general, FTA does not seek greater rights in data or copyright than described in the Common Grant Rules when it provides FTA capital assistance to support acquisitions. But when FTA provides federal assistance to support the costs of a research, development, demonstration, or a special studies project, FTA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor. FTA's purpose in providing federal assistance for a research, development, demonstration, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project to project participants. Therefore, unless FTA determines otherwise in writing, FTA expects the following conditions to apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects.

- **Publication Restrictions:** Except for its own internal use, neither the recipient nor the third party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the federal government, unless the federal government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.
- **Distribution of Data:** Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, each recipient and third party contractor must agree that, in addition to the rights in data and copyrights that it must provide to FTA under the Common Grant Rules, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

In certain circumstances, however, FTA may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.

**Recommended Contract Language****Rights in Data and Copyright Requirements**

Publication Restrictions: Except for its own internal use, neither [insert Recipient] nor [insert third party contractor] may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.

Distribution of Data: Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, [insert Recipient] and [insert third party contractor] agree that, in addition to the rights in data and copyrights that it must provide to FTA under the Common Grant Rules, FTA may make available to any FTA Recipient or subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

Notification of Federal Participation**Clause Overview**

To the extent required by law, in the announcement of any third party contract award for goods or services having an aggregate value of \$500,000 or more, the recipient must specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express the amount of that federal assistance as a percentage of the total cost of that third party contract.

Recommended Contract Language**Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods or services having an aggregate value of \$500,000 or more, [insert Recipient] agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express the amount of that federal assistance as a percentage of the total cost of that third party contract. This project is expected to have the following funding, federal 80 percent and local 20 percent.



Energy Conservation (42 USC 6321 et seq., 49 CFR 18)

Clause Overview

The energy conservation requirement applies to all contracts except micro-purchases. The contractor must comply with mandatory standards and policies relating to energy efficiency that are defined in the state energy conservation plan issued in accordance with the Energy Policy and Conservation Act. The State Energy Plan for Utah (Public Law 94-163, and as amended in the Energy Conservation and Production Act (94-385)) promotes the conservation of energy to reduce the rate of growth of energy demand and to reduce dependence on imported oil in the United States. The state encourages the use of energy efficient and alternative fuels for transportation.

Recommended Contract Language

Energy Conservation

[Insert Contractor] shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between [insert Purchaser] and FTA, as they may be amended or promulgated from time to time during the term of this contract. [Insert Contractor]'s failure to so comply shall constitute a material breach of this contract.

Recycled Products (42 USC 6962, 40 CFR 247, Executive Order 12873)

Clause Overview

The recycled products requirement applies to EPA designated items, when the procuring agency purchases \$10,000 or more of one of these items in a fiscal year or when the cost of such items purchased during the previous fiscal year was \$10,000. The contractor must comply with the above as they apply to the procurement of items designated in Subpart B of 40 CFR 247. The recipient must provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the federal government determines otherwise in writing. See <http://www.epa.gov/osw/inforesources/pubs/orientat/rom51.pdf>.

Recommended Contract Language

Recycled Products

[Insert Contractor] agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR 247.



Conformance with National ITS Architecture (SAFETEA-LU Section 5307, 23 USC 512)

Clause Overview

To the extent applicable, the recipient must conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing (see Section 7 of this document for further information).

Recommended Contract Language

Conformance with National ITS Architecture

Intelligent transportation system (ITS) property and services must comply with National ITS Architecture and Standards to the extent required by Section 5307 (c) of SAFETEA-LU, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66FR 1455 et seq.; January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with federal requirements.



ADA Access (49 USC 5301)

Clause Overview

The Americans with Disabilities Act expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts should be made in planning and designing those services and facilities to implement those policies. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

1. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR 37;
2. USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 CFR 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/USDOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR 1192 and 49 CFR 38;
4. USDOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR 35;
5. USDOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR 36;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped" 41 CFR 101.19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630;
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR 64, Subpart F;
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR 609;
9. And any implement requirement FTA may issue.

**Recommended Contract Language****ADA Access**

[Insert Recipient] agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

1. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504): 29 USC 794 prohibits discrimination on the basis of disability by recipients of federal financial assistance.
2. Americans with Disabilities Act of 1990, as amended: 42 USC 12101 et seq. prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
3. DOT Public Transportation Regulations implementing Section 504 and the ADA: These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR 1192 and 49 CFR 38. Examples of requirements include, but are not limited to, the following:
 - a) Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;
 - b) Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
 - c) Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;
 - d) Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.



Notification of Federal Participation for States

Clause Overview

To the extent required by federal law, the state agrees that, in administering any federal assistance program or project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of federal assistance for the Program or the Project shall indicate that FTA is the federal agency that is providing the federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the federal assistance is authorized, as applicable, and the amount provided.

Recommended Contract Language

Notification of Federal Participation for States

To the extent required by federal law, the State agrees that, in administering any federal assistance program or project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of federal assistance for the program or the project shall indicate that FTA is the federal agency that is providing the federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the federal assistance is authorized, as applicable, and the amount provided.



APPENDIX C

PUBLIC SOLICITATION PROCESS CHECKLIST (RFPs AND IFBs)



Appendix C: Public Solicitation Process Checklist (RFPs and IFBs)

See Section 5, Contract Management – From Solicitation to Closeout, of this manual for further information regarding the procurement and contract management process.

PRE-PROCUREMENT PROCESS

1. Document the procurement need _____
 - What is the need?
2. Document desired specifications, plans, or drawings _____
 - Description of needs (not brands)
 - Allow for full and open competition (see pg. 9)
3. Brand name or sole-source justification (see pgs. 7–8) _____
4. Document the rationale for public solicitation method _____
 - RFP/RFQ or Bid (see pgs. 16–18)
5. Establish timetable for the procurement process _____
 - Ex. date of public release, deadline for response, date of contractor/vendor notification
6. Public advertising plan _____
 - When, where, how?
7. Determine potential bidders _____
 - Ex. Vendors utilized in the past, vendors that other agencies use
 - No geographic preferences (see pg. 9)
8. Perform price estimate _____
 - Published competitive prices
 - Telephone bids
 - Results of competitive procurements
 - Estimates of in-house or third party estimators
9. Identify DBE goal _____
 - Contact UDOT Civil Rights (see pg. 11)
10. Identify who needs to be involved _____
 - Committee members for RFP
 - UDOT Civil Rights
 - Others that may have interest in the project/procurement
11. Scoring evaluation and criteria (for RFP/RFQ) _____
 - What is the method for fairly judging each proposal
Ex. What percentage is cost? What percentage is methodology?



SEND THE PROCUREMENT PACKAGE TO UDOT

- | | |
|--|-------|
| 12. Draft RFP/RFQ or bid, including: | _____ |
| • All required FTA clauses and certifications | |
| • DBE goal (if there is one) | |
| • Scoring/evaluation process and criteria | |
| 13. Identify Project Manager and Contract Manager | _____ |
| • Separate responsibilities for separate individuals | |
| 14. Price estimate | _____ |
| • Including methodology | |
| 15. Include potential bidders/proposers | _____ |
| 16. Protest procedures | _____ |
| 17. Public advertising plan | _____ |

FINALIZE BID/RFP/RFQ

- | | |
|---|-------|
| 18. Respond to UDOT Procurement Package comments listed above | _____ |
| 19. Send to UDOT for final approval | _____ |
| 20. Proceed with public release after receiving written
(e-mail or hard copy) approval from UDOT | _____ |

CONDUCTING THE PROCUREMENT

- | | |
|---|-------|
| 21. Advertise and notify potential bidders/proposers | _____ |
| • Include pre-bid or pre-approval conference date (if applicable) | |
| • Include deadline for all questions regarding bid/RFP (if applicable) | |
| 22. Conduct pre-bid or pre-proposal conference (optional) | _____ |
| • Invite UDOT Civil Rights Department (DBE goal only), program manager | |
| 23. Procedures for approved equals (if applicable) | _____ |
| 24. Pre-bid/pre-proposal approved equals protest procedures (if applicable) | _____ |
| 25. Deadline for bid and RFP submittals | _____ |

UDOT PRE-AWARD REVIEW PROCESS

- | | |
|--|-------|
| 26. Evaluate bids/proposals for required elements/
responsiveness and document decision | _____ |
| 27. Review evaluation process | _____ |
| 28. Include UDOT Civil Rights Department (DBE goal only) | _____ |
| 29. Notify selected and rejected bidders/proposers | _____ |



POST-AWARD AND POST-DELIVERY ACTIVITIES

Note: See Bus Procurement – Steps to FTA Pre-Award and Post-Delivery Requirements in Appendix B

- | | |
|--|-------|
| 30. Issue purchase order or service contract to selected bidder/proposer | _____ |
| 31. Monitor contractor activities (see pgs. 19–21) | _____ |
| 32. Post-delivery inspection of capital equipment purchases | _____ |
| 33. Complete required post-delivery audit forms | _____ |
| 34. Acceptance, warranty, and service arrangements made with contractor | _____ |
| 35. Vehicle title/registration, showing UDOT as lien holder | _____ |
| 36. Payment/reimbursement of the federal share of purchase cost | _____ |
| 37. Maintain detailed files of all activities and certifications | _____ |

CONTRACT CLOSEOUT

- | | |
|---|-------|
| 38. Ensure delivery was what was contracted for (scope complete) | _____ |
| 39. DBE gets paid within 10 days of prime (if applicable) | _____ |
| 40. Final invoices are paid and Release of Retention | _____ |
| 41. Final performance of progress/status report completed (if applicable) | _____ |



APPENDIX D

UNAUTHORIZED AND AUTHORIZED SIMPLE PROCUREMENT CHECKLISTS

(Also located in Section 4 of this manual)



Appendix D: Unauthorized and Authorized Simple Procurement Checklists

Unauthorized Procurement Simple Checklists by Threshold

Unauthorized Procurement Micro-Purchase Checklist

\$0 – \$2,999

- ☐ Identify item specifications/needs
- ☐ Obtain 2 telephone/e-mail bids, or
Sole-source justification
- ☐ Utilize the Utah DBE directory (if applicable)
- ☐ Maintain purchase history file

Unauthorized Procurement Small Purchase Checklist

\$3,000 – \$4,999

- ☐ Identify item specifications/needs
 - ☐ Obtain 2 telephone/e-mail bids, or
Sole-source justification
 - ☐ Utilize the Utah DBE directory (if applicable)
 - ☐ Maintain detailed purchase history file
- Or
- ☐ Choose public solicitation type
(bid or RFP/RFQ)
 - ☐ Develop decision criteria; include with bid
 - ☐ Obtain UDOT approval of the document prior to
public release
 - ☐ Obtain UDOT approval of award prior to
contractor notification



Authorized Procurement Simple Checklists by Threshold

Authorized Procurement Micro-Purchase Checklist

\$0 – \$2,999

- ☐ Identify item specifications/needs
- ☐ Obtain 2 telephone/e-mail bids, or
Sole-source justification
- ☐ Utilize the Utah DBE directory (if applicable)
- ☐ Maintain purchase history file

Authorized Procurement Small Purchase Checklist

\$3,000 – \$49,999

- ☐ Identify item specifications/needs
 - ☐ Obtain 2 telephone/e-mail bids, or
Sole-source justification
 - ☐ Utilize the Utah DBE directory (if applicable)
 - ☐ Maintain detailed purchase history file
- Or
- ☐ Choose public solicitation type (bid or RFP/RFQ)
 - ☐ Develop decision criteria; include with bid
 - ☐ Obtain UDOT approval of the document prior to
public release
 - ☐ Obtain UDOT approval of award prior to
contractor notification
 - ☐ Maintain adequate files for auditing purposes

Authorized Public Solicitation Checklist

\$50,000 or More

- ☐ Identify item specifications/needs
- ☐ Utilize DBE directory (if applicable)
- ☐ Choose public solicitation type (bid or RFP/RFQ)
- ☐ Develop decision criteria; include with bid
- ☐ Obtain UDOT approval of the document prior to
public release
- ☐ Obtain UDOT approval of award prior to
contractor notification
- ☐ Maintain adequate files for auditing purposes



APPENDIX E

REQUIRED CERTIFICATIONS, FORMS, AND REPORTS



Appendix E: Required Certifications, Forms, and Reports

Requirement	Criteria	Link to Certification/Form
Bus Testing Certification *	Procurements of buses and modified mass produced vans	http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html#BM8
TVM Certifications *	All rolling stock procurements	http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html#BM8
Buy America Certification *	Procurements of steel, iron or manufactured products exceeding \$100,000	http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html#BM8
Pre-award Review	Rolling stock procurements exceeding \$100,000	http://www.fta.dot.gov/laws/leg_reg_5434.html
Pre-award Buy America Certification	Purchaser verifies bidder certification	http://www.fta.dot.gov/laws/leg_reg_5434.html
Pre-award Purchaser's Requirement	Rolling stock procurements exceeding \$100,000 – verifies that manufacture met bid specs	http://www.fta.dot.gov/laws/leg_reg_5434.html
Post Delivery Review	Rolling stock procurements exceeding \$100,000	http://www.fta.dot.gov/laws/leg_reg_5434.html
Post Delivery Buy America Certification	Rolling stock procurements exceeding \$100,000	http://www.fta.dot.gov/laws/leg_reg_5434.html
Post Delivery Purchaser's Requirement	Rolling stock procurements exceeding \$100,000	http://www.fta.dot.gov/laws/leg_reg_5434.html
On-Site Inspector's Report	Rolling Stock procurements for more than 10 vehicles	http://www.fta.dot.gov/laws/leg_reg_5434.html
Federal Motor Vehicles Safety Standards (Pre-award and Post Delivery)	Motor vehicle procurements (49 CFR 571)	http://www.fta.dot.gov/laws/leg_reg_5434.html
Lobbying *	Procurements exceeding \$100,000	http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html#BM8
Standard Form LLL* and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	http://www.whitehouse.gov/omb/grants/sflllin.pdf
* Sample Certification is included below.		



Steps to Pre-Award and Post-Delivery Review (specific to buses and vans)

All Pre-Award and Post-Delivery documentation must be filed for auditing purposes

Requirement	Requirement	Responsibility	Who Signs
Buy America Certification	Can meet Buy America requirements	Bidder	Bidder
Pre-Award Review (Prior to Formal Contract Signing)			
Buy America Certification or waiver	Verifies that bid specs meet requirements	Purchaser	Purchaser
Purchasers Requirement Certification	Verifies that bid specs meet solicitation needs	Purchaser	Purchaser
FMVSS Certification	A letter from manufacturer stating sticker information	Purchaser needs to acquire	Manufacturer
Post-Delivery Review (From Contract Signing to Title Transfer (based on actual deliverable))			
Buy America Certification	Deliverable meets Buy America requirements	Purchaser	Purchaser
Purchasers Requirement Certification	Complete visual inspection and road test	Purchaser	Purchaser
FMVSS Exempt Certification	A letter from manufacturer stating exemption	Purchaser needs to acquire	Manufacturer
FMVSS Certification	Verify sticker information	Purchaser	Purchaser
* Sample Certification is included below			

Source: http://www.fta.dot.gov/laws/leg_reg_5428.html



Bus Testing Certification

Signed by the contractor/manufacturer/bidder, given prior to the purchaser's acceptance of the vehicle.

Certification of Compliance with FTA's Bus Testing Requirements

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 USC A 5323(c) and FTA's implementing regulation at 49 CFR 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR 29.

Date _____

Signature _____

Company
Name _____

Title _____



TVM Certification

The certification must be completed and submitted with the proposal as a condition of proposing.

TVM Certification

The bidder, if a transit vehicle manufacturer, hereby certifies that it has complied with the requirements of 49 CFR 26.49 by submitting a current annual DBE goal to the Federal Transit Administration. The goals apply to Federal Fiscal Year _____ and have either been approved or not by FTA.

The bidder, if a non-vehicle manufacturer supplier, hereby certifies that the manufacturer of the transit vehicle to be supplied has complied with the above-referenced requirements of 49 CFR 26.49.

Dealer _____

Dealer
Representative _____

Date _____



Buy America Certification

The certification must be completed and submitted with the proposal as a condition of proposing.

Certification of Compliance with 49 USC 5323(j)(2)(C)

The bidder or offeror hereby certifies that it will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR 661.5.

Date _____

Signature _____

Company
Name _____

Title _____

Certification of Non-Compliance with 49 USC 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j)(2)(C) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company
Name _____

Title _____



Lobbying Certification

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

The certification must be completed and submitted with the proposal as a condition of proposing.

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 USC 1601, et seq.)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 USC 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of



each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official _____

Name and Title of Contractor's Authorized Official _____

Date _____



Standard Form LLL – Disclosure of Lobbying Activities

The lobbying requirements apply to Construction, A&E, Acquisition of Rolling Stock, Professional Service, Operational Service, and Turnkey contracts.

The certification must be completed and submitted with the proposal as a condition of proposing.

Standard Form LLL – Disclosure of Lobbying Activities	
1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award
3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____	
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: \$
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>
11. Information requested through this form is authorized by title 31 USC 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 USC 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)



Instructions for Completion of Standard Form LLL – Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to title 31 USC 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.



10. a) Enter the full name, address, city, state, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered federal action.
b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.



Pre-Award and Post-Delivery Certifications

Pre-Award Buy America Compliance Certification

As required by 49 CFR 663, Subpart B, _____ (the recipient) is satisfied that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient, or its appointed _____ analyst (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____

Title: _____

Pre-Award Buy America Exemption Certification

As required by 49 CFR 663, Subpart B, _____ (the recipient) certifies that there is a letter from FTA that grants a waiver to the buses to be purchased _____ (number and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____

Title: _____

Pre-Award Purchaser's Requirements Certification

As required by 49 CFR 663, Subpart B, _____ (the recipient) certifies that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

_____ Date:

Signature: _____

Title: _____

**Pre-Award FMVSS Compliance Certification**

As required by 49 CFR 663, Subpart _____ D,
(the recipient) certifies that it received, at the pre-award stage, a copy of
_____ 's (the manufacturer) self-certification information
stating that the buses, _____ (number and description of
buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National
Highway Traffic Safety Administration in 49 CFR 571.

Date: _____

Signature: _____

Title: _____

Pre-Award FMVSS Exemption Certification

As required by 49 CFR 663, Subpart D, _____ (the recipient)
certifies that it received at the pre-award stage, a statement from
_____ 's (the manufacturer) indicating that the buses,
_____ (number and description of buses), will not be subject
to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety
Administration in 49 CFR 571.

Date: _____

Signature: _____

Title: _____

Post-Delivery Buy America Compliance Certification

As required by 49 CFR 663, Subpart C, _____ (the recipient)
certifies that it is satisfied that the buses received, _____
(number and description of buses) from _____ (the
manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act
of 1982, as amended. The recipient of , or its appointed analyst
_____ (the analyst – not the manufacturer or its agent), has
reviewed documentation provided by the manufacturer, which lists (1) the actual component and
subcomponent parts of the buses identified by the manufacturer, country of origin, and cost; and (2) the
actual location of the final assembly point for the buses, including a description of the activities that took
place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____

Title: _____

**Post-Delivery Buy America Exemption Certification**

As required by 49 CFR 663, Subpart C, _____ (the recipient) certifies that there is a letter from FTA, which grants a waiver to the buses received, _____ (manufacturer, number, and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Post-Delivery Purchaser's Requirements Certification

As required by 49 CFR 663, Subpart C, _____ (the recipient) certifies that a resident inspector, _____ (the resident inspector – not an agent or employee of the manufacturer), was at _____ 's (the manufacturer) manufacturing site during the period of manufacture of the buses, _____ (number and description of buses). The inspector monitored manufacturing and completed a report on the manufacture of the buses providing accurate records of all bus construction activities. The report addresses how the construction and operation of the buses fulfill the contract specifications. After reviewing the report, visually inspecting the buses, and road testing the buses, the recipient certifies that the buses meet the contract specifications.

Date: _____

Signature: _____ Title: _____

Signature: _____ Title: _____

Post-Delivery FMVSS Compliance Certification

As required by 49 CFR 663, Subpart _____ D, (the recipient) certifies that it received, at the post-delivery stage, a copy of _____ 's (the manufacturer) self-certification information stating that the buses, _____ (number and description of buses), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR 571.

Date: _____

Signature: _____

Title: _____



APPENDIX F

PIGGYBACKING WORKSHEET



Appendix F: Piggybacking Worksheet

Piggybacking Worksheet

To assist in the performance of your review to determine if a situation exists where you may participate in the piggybacking of an existing contract, the following considerations are provided.

WORKSHEET	YES	NO
Preapproval for piggybacking must be obtained from a UDOT PTT Program Manager		
Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits?		
Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
Did the Contractor submit the "certifications" required by federal regulations (See Appendix B)?		
Does the contract contain the clauses required by federal regulations (See Appendices B and E)?		
Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
Does your state law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids (See Section 6, State Contract Utilization)?		
Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
Does the contract term comply with the five-year term limit established by FTA?		
Was there a proper evaluation of the bids or proposals? Send a copy of the evaluation to UDOT and Include in your files.		
If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they the scope" of the contract or are they "cardinal		

Source: FTA Best Practices Procurement Manual Appendix B.16